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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGNAL APPLICATION NO. 65 OF 2001
Cuttack, this the 18th January, 2001

Izaz Hussain Khan Applicant

Vrs.

The Principal Accountant General(A&E)
and another 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
18/1/2002

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 65 OF 2001
Cuttack, this the 18th day of January, 2002

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Izaz Hussain Khan,
aged about 52 years,
son of late Rafique Khan,
working as Accountant
in the office of the Accountant General (A&E),
Orissa, BhubaneswarApplicant

Advocates for applicant - M/s S.K.Purohit
P.K.Sahoo
K.M.H.Niamati

Vrs.

1. The Principal Accountant General(A&E),
Orissa, Bhubaneswar.
2. Deputy Accountant General (Admn.)-cum-
Estate Officer, Office of the Principal Accountant
General (A&E), Orissa, Bhubaneswar

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Respondents

Advocate for respondents - Mr.B.Dash
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the order dated 9.11.2000 (Annexure-2) cancelling the allotment of Quarters No. Type-II-115 and the order dated 9.11.2000 (Annexure-3) charging him damage rent of Rs.3394/- and water tax of Rs.20/- per month from 1.11.2000. By way of interim relief the applicant had prayed for a direction to the respondents not to recover the damage rent from the pay and allowances of the applicant. In order dated 2.3.2001 the O.A. was rejected at the stage of admission on the ground that the Tribunal lacks jurisdiction to entertain the O.A. Being aggrieved

by this the petitioner had originally filed MANo. 247 of 2001 for reviewing the order dated 2.3.2001 rejecting the O.A. on the ground of lack of jurisdiction. M.A.No.247 of 2001 was disposed of in order 16.3.2001 holding that the M.A. cannot be treated as a Review Application and the petitioner if he is so advised has to file a Review Application. Accordingly, the petitioner filed R.A.No.4 of 2001 which was allowed in order dated 19.6.2001 and the O.A. was ordered to be taken up for hearing.

2. The case of the applicant is that he is working as an Accountant in the office of the Accountant General (A&E), Orissa and had been occupying quarters No.Type-II-115 with his family members on the quarters being allotted to him. On 15.9.2000 Deputy Accountant General (Administration)-cum-Estate Officer, office of the Principal Accountant General issued notice directing him to show cause in person on 22.9.2000 regarding illegal subletting of the quarters to an outsider. This notice is at Annexure-1. On 22.9.2000 the applicant appeared before respondent no.2 and denied the allegation. His stand before respondent no.2 was that no spot inspection had been made and he also asked for a copy of the inspection report, if any, but this was not supplied to him. On 9.11.2000 the applicant received the two impugned orders at Annexures 2 and 3. Immediately thereafter the petitioner filed an appeal on 28.11.2000 under Rule 4 of House Allotment Rules. The applicant has stated that he was not given adequate opportunity to show cause against the allegation of subletting of quarters and thus rules of natural justice were violated. His second grievance is that under House Allotment Rules in case of subletting 60 days time is required to be allowed to the allottee and to

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any other person residing with him to vacate the premises and allotment should be cancelled from the date of vacation of the premises or expiry of the period of sixty days. But in this case sixty days time was not allowed before cancellation of the allotment. In the context of the above the applicant has come up in this petition with the prayers referred to earlier.

3. In order dated 3.7.2001 recovery of damage rent ordered at Annexure-3 was stayed until further orders and this interim order has continued till date.

4. The respondents have stated in their counter that action was taken against the applicant and eviction order was passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "Act of 1971") and appeal against the order of the Estate Officer lies to the District Judge and the Tribunal has no jurisdiction to entertain matter. It is further stated that at the time of surprise visit by the officials it was found that the quarter was let out to an outsider, namely, Smt. Binodini Dei, wife of Sri A.N. Srichandan. It is further stated that in response to the notice dated 15.9.2000 the applicant appeared before the Deputy Accountant General (A&E)-cum-Estate Officer (respondent no.2) on 22.10.2000 and admitted the fact of subletting of quarters to an outsider. While admitting the fact the applicant agreed to vacate the quarters on 31.10.2000. It is further stated that as the applicant did not vacate the quarters by 31.10.2000 the allotment was cancelled and damage rent as per rules was charged in the order at Annexure-2. It is further stated that the appeal/representation dated

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23.11.2000 has been disposed of by the Principal Accountant General (A&E) on 5.3.2001 and the result communicated to the applicant. It is further stated that recovery of damage rent has been stopped with effect from 1.6.2001 as per order of the Tribunal. On the above grounds the respondents have opposed the prayer of the applicant.

5. The applicant in his rejoinder has taken the stand that eviction and charging of penal rent have been done not under the Act of 1971 but under the Quarters Allotment Rules. He has also denied the averment made by the respondents regarding his admission of having sublet the quarters and his agreement to vacate the quarters by 31.10.2000.

6. I have heard Shri S.K.Purohit, the learned counsel for the petitioner and Shri B.Dash, the learned Additional Standing Counsel for the respondents. The learned counsel for the petitioner had filed MANo.308 of 2001 seeking a direction to the respondents to produce the records relating to eviction order issued against the applicant. Accordingly, the learned Additional Standing Counsel has produced File No.E.C.Trial No.294 dated 28.11.2001 and I have gone through the same.

7. The sole question for consideration in this case is whether action has been taken against the applicant under the Act of 1971 or under the Quarters Allotment Rules. Admittedly, against an order of the Estate Officer under the Act of 1971 appeal lies to the District Judge. The Full Bench of the Tribunal in the case of Rashila Ram v. Union of India, Full Bench Judgments of

Central Administrative Tribunal (1986-1989) 347, have taken the view that eviction proceedings against the Central Government employees under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 fall within the purview of Central Administrative Tribunal. It is further stated that where proceedings have been started under this Act it would be proper for the aggrieved employee to contest his case before the Estate Officer and he may approach the Tribunal only after the final orders have been passed by the Estate Officer. It has also been observed that he can also file an appeal before the District Judge and in that event he cannot approach the Tribunal till conclusion of his case before the appellate authority, i.e., the District Judge. This Full Bench decision of the Tribunal came up for consideration by the Hon'ble Supreme Court in Civil Appeal Nos. 1301 to 1304 of 1990 and their Lordships in order dated 6.9.2000 set aside the order of the Tribunal and held that a person aggrieved by the order of the Estate Officer can only approach the District Judge who is the appellate authority under the Act of 1971. It is on this ground alone that the Tribunal in their order dated 2.3.2001 had rejected the O.A. The Review Application was allowed on the applicant urging that the proceedings against him were taken up not under the Act of 1971 but under the Quarters Allotment Rules. Law is now well settled that in case proceedings have been taken against him under the Act of 1971 and if he is aggrieved by any order passed in the proceedings he has to approach the appellate authority under the Act, i.e., the District Judge, and the Tribunal has no jurisdiction to entertain the O.A. On a reference to Annexure-2 we find

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that this order has been issued by the Deputy Accountant General (Administration)-cum-Estate Officer. Annexure-3 has also been issued by Accounts Officer of the Estate Cell. From this it is clear that proceedings have been initiated against the applicant under the Act of 1971. Moreover, from the first page of the notesheet I find that as per the note signed by three officials, i.e., Dealing Assistant (Estate), Assistant Accounts Officer (Welfare) and Section Officer (Estate), during spot inspection it was found that the relevant quarter was in occupation of Smt. Binodini Dei, wife of Sri A.N. Srichandan who is having STD business at Satyanagar. In response to the showcause notice apparently the applicant appeared and there is an endorsement in the file that he appeared and agreed to vacate the quarters on 31.10.2000. From this it is clear that the applicant had agreed to vacate the quarters on 31.10.2000. In view of this, it is clear that his contention that adequate opportunity was not given to him is without any basis. In any case, when the proceedings have been initiated under the Act of 1971 the Tribunal has no jurisdiction to entertain the O.A. If the petitioner has any grievance with regard to the order of eviction and the order charging damage rent, he is free to approach the appellate authority under the Act of 1971. In view of the above, I hold that the O.A. is liable to be rejected on the ground of lack of jurisdiction of the Tribunal. It is so ordered. The interim order staying recovery of damage rent stands vacated.

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8. In the result, the O.A. is rejected. No costs.

Somnath Som
(SOMNATH SOM)
18.1.202
VICE-CHAIRMAN

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