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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 499 of 2003
Cuttack, this the 28th day of June, 2007.

Sri Narendra Dip ..... Applicant
Versus
Union of India & Others ..... Respondents

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not? yes

1. WHETHER it be circulated to all the Benches of the Tribunal or not? yes

28/6/07
(B.B.Mishra)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 499 of 2003
Cuttack, this the 28th day of June, 2007

C O R A M:-

THEHON'BLE MR.B.B.MISHRA,MEMBER(ADMN.)

Shri Sri Narendra Dip, aged about 69 years, Son of Dallen Dip, at Christianpara, Hirakud, a retired Gr. D employee of Hirakud Sub Post Office, Hirakud, Sambalpur.

.... APPLICANT.

BY legal practitioner: M/s. D.P.Dhalsamanta,
Advocates.

-VERSUS-

1 Union of India, represented through its Director General of Posts, Government of India, Ministry of Communications, Department of Posts, Dak Tar Bhawan, New Delhi.
2. The Chief Post Master General, Orissa Circle, Bhubaneswar, a.
3. Director of Postal Services, Office of the Sambalpur Region, Sambalpur.
4. Estate Officer-cum-APMG(WC), Office of CPMG, Orissa, Bhubaneswar.
5. Superintendent of Post Offices, Sambalpur Divison, Sambalpur.

.... RESPONDENTS

By legal practitioner ..... Mr.B.Mohapatra, ASC.

ORDER

MR.B.B.MISHRA, MEMBER(A)

Fact in short, is that while the applicant was working as a Group D official in Hirakud Sub Post Office, he was allotted residential accommodation in the year 1972. He retired on medical invalidation on 2nd August, 1989. The allotment was cancelled on 31st January, 1990 and eventually he vacated the quarters on 15th September, 1992. He was ordered to pay penal rent from Ist February, 1990 @ Rs.45/- per sq. meter onwards to the date of the vacation of quarters. For non vacation of the allotted quarters, similar orders were passed against another three employees of the Postal Department. Being aggrieved by such action of the Respondents, Applicant along with three others had approached this Tribunal by filing OA Nos. 358/92 (Aintho Bhaisal), 359/92(Nirakara Prasad Dhar), 360/92(Jubaraj Bagarti), 385/92(Narendra Dip). Since common question of fact and law is involved, all these cases were heard and disposed of by this Tribunal in a common order dated 27th July, 1995 with the following directions:

"4. The decisions in the present applications do not satisfy the requirement of rules and also the instructions of the concerned ministry and cannot be upheld. The orders imposing penal rent in these four case are therefore quashed. It is clarified that the respondents are free to have the penal rent assessed by the C.P.W.D. If such a course is not found feasible, they have the liberty to get the same assessed by the State P.W.D. authorities, or to adopt the rates which may be already in vogue under the State Government. In the alternative they could also examine and decide whether the recovery of twice, or thrice, the standard rent, as considered appropriate and permissible, will be justified or adequate as per the normal rules of the Department and the relevant FR/SR, and if such levy is considered sufficient to meet the purposes of these cases fairly and adequately. A copy of this order may be sent to S/Shri Balachanddra and A.Ghosh-Dastidar, Chief Postmaster General and Post Master General, Orissa Circle and Sambalpur Regions, respectively and the Director of Postal Services, Berhampur Region, to enable them to initiate necessary action to meet the requirement of similar situations on the lines suggested that may arise hereafter."

After the orders of this Tribunal dated 27th July, 1995, the Respondent-Department vide its order dated 24.04.1997 re-imposed the penal rent of Rs. 1,15, 974/- for the period from 1. 2..1990 to 26.12.1996 @ Rs. 1400/- per month on the

Applicant. This conclusion was reached by the Respondents based on the circular of the Government of Orissa dated 06.07.1994. Being aggrieved by this order, the Applicant has approached in this second round of litigation filed under section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order dated 24.04.1997 (Annexure-A/3) directing recovery of an amount of Rs. 1,15,974/- (minus) Rs. 17,750/- (already recovered) from the Dearness Relief of the Applicant from April, 1997 till completion of the recovery.

Respondents have filed their counter opposing the prayers of the Applicant. Their stand is that there was no wrong on the order of recovery which was made strictly in accordance with Rules and after complying the principles of natural justice. It is their further stand that in case the order of recovery is quashed, there will be heavy loss to the state exchequer. On the above grounds, they have prayed for dismissal of this Original Application.

Heard Learned Counsel for both sides and went through the materiasl placed on record.

Learned Counsel for Applicant, by relying on the decision of this Tribunal dated 10th October, 2002 passed in OA No. 504/1997 (Nirakara Prasasd Dhar v. UOI) which was made on the basis of the decisions of the Hon'ble Apex Court in the case aof State of Orissa and others v. Sadasiva Mohanty, 1997 SCC (L&S) 780 has argued that imposition of penal rent for alleged unauthorized occupation of the quarters is bad in law. He has argued that the Applicant was a Group D employee of the Postal Department and after his retirement the meager amount of pension with DA is the only means of his livelihood. The decision to deduct DA from his pension at this old age of 72 years is nothing but depriving him and his dependent family members the means of survival. His submission is that since the alleged unauthorized period of the quarters in question was from 01.02.1990, the circular of the Government of Orissa dated 06.07.1994 based on which re-imposition of the penal rent has been ordered, has no application; for the same having no retrospective effect. To draw the inference that DA is a part of the Pension and no order can be made to recover any dues by way of stopping the DA, he has taken me through the decisions

of the Hon'ble Apex Court in the cases of *D.V.Kapoor v. Union of India,* AIR 1990 SC 1923; *R.Kapur v. Director of Inspection (Painting and Publication) Income Tax and Another,* JT 1994 (6) SC 354) and Gorakhpur Univesity and Others v. Dr.Shitla Prasad Nagendra and another,AIR 2001 SC 2433 and of the Hon'ble High Court of Orissa in the case of Khageswar Nayak v. State of Orissa, (2004)2 ATT(HC)261 and, therefore, he has prayed that since the order under Annexure-A/3 is contrary to the Rules and judge-made laws cited above, the same needs to be set aside.

On the other hand Learned Counsel for the Respondents opposed the argument advanced by the Learned Counsel for the Applicant by stating that the decisions relied on by Learned Counsel for the Applicant have no application to the present facts of the case. Secondly he has argued that there is no exception in the rules for the Group D employees of the Department. Rules have universal application irrespective of power and position. Since the Applicant over stayed the quarters beyond the permissible limits and did not vacate the same on repeated

warnings, there was no wrong in imposing penal rent on the Applicant. There is also no wrong in ordering recovery of the amount from the DA in absence of any other dues lying un-disbursed. He has also argued that since the applicant vacated the quarters in 1996, the circular of the Government of India dated 06.07.1994 has fullest application to the fact of the present case. He has given no comment on the order dated 10th October, 2002 passed in OA No. 504 of 1997 on the ground that the same is under subjudice before the Hon'ble High Court of Orissa in WP (C) No. 13602 of 2004. On the above ground, Learned Counsel for the Applicant has fervently prayed for dismissal of this OA.

Before coming to the merit of the matter, I would like to quote the observations of the Hon'ble Apex Court/High Court in various case relied on by the Learned Counsel for Applicant and they are as under:

In the case of *D.V.Kapoor v. Union of India,* AIR 1990 SC 1923, the view of the Hon'ble Supreme Court is that after retirement the employee has a statutory right to get his gratuity and

any order directing withholding of gratuity must precede with a finding that the retired employee committed grave misconduct or negligence. Right to gratuity is a statutory right. No provision of law has been brought to our notice under which the president is empowered to withhold gratuity as well after his retirement as a measure of punishment.

Though the Tribunal held that the D.C.R.G. cannot be withheld merely because the claim for damages for unauthorized occupation is pending did not feel it inclined to grant interest on the held up amount towards gratuity. It is in this background the matter was carried on appeal by the Appellant to the Hon'ble Apex Court and the Hon' Apex Court held as under:

> "The Tribunal having come to the conclusion that D.C.R.G .cannot be withheld merely because the claim for damages for unauthorized occupation is pending, should in our considered opinion, have granted interest at the rate of 18% *since right to gratuity is not dependent upon the appellant vacating the official accommodation.* Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The D.C.R.G. due to the

> appellant will carry interest at the rate of 18% per annum from 1.6.1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule -48A".
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> (R.Kapur v. Director of Inspection (Painting and Publication) Income Tax and Another, JT 1994 (6) SC 354)

This question came up for consideration before the Hon'ble Apex Court in the case of Gorakhpur University and Others v. Dr.Shitla Prasad Nagendra and another,AIR 2001 SC 2433 wherein Their Lordships have held as under:-

> "Pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same is not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards Provident Fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee.
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> More so, when the employee was allowed to remain in occupation on

receipt of the normal rent as the University authorities regularly accepted the rent at normal rates every month from the petitioner-employee till the quarter was vacated. And in spite of request made for the allotment of the said quarter in favour of the son of the employee who is in the service of the University, no decision seems to have been taken and communicated though it is now claimed in the court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all teachers as well as that of the Executive Council dated l8.07-l994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so called penal rent after giving prior show cause notice or any opportunity to him before even proceedings to recover the same from the respondents renders the clam for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recovery summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory stands. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders

> increasing the rates of penal rent, the applicability of which to the employee itself was again seriously disputed and to some extent justifiably too, the University cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the employee. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Court, however, clarifies that order shall not have the effect of foreclosing the rights of the University, if an, if the University chose to work out the same, as is permissible in law".

Taking support of the decision of the Hon'ble Supreme Court rendered in the case of DV Kapoor (supra), the Hon'ble High Court of Orissa, in the case of Khageswar Nayak Vrs. State of Orissa, (2004)2 ATT(HC)261 have held that no due is recoverable from the gratuity of a retired employee.

In Union of India vrs. Madan Mohan Prasad – 2003 (I) ATJ 246 the Hon'ble Supreme Court has held that penal/damage rent does not fall under the term 'admitted' or obvious dues. Following the view of the Hon'ble Supreme Court, the Hyderbad Bench of this Tribunal had also taken the same view in the case of

A. Ramaiyan vrs. the General Manager, SC Railway, Secunderabad and others – 2005 (2) ATJ 338.

The decision reached by this Tribunal in OA No. 504 of 1997 dated 10th October, 2002 has no application to the present case because in that case the overstayal period was from 21.11.1990 to 27.08.1992 and, the circular based on which penal rent was imposed was dated 06.07.1994. Therefore, the Tribunal had rightly quashed the impugned order on the ground that circular of the Government of Orissa dated 06.07.1994 was not applicable for the same having no retrospective application. But in the present case the applicant vacated the quarters in the year 1996 and, therefore, that principle is not applicable to this case.

But significant feature of the matter is that before ordering to recover the amount from the DA of the Applicant, no notice was put to him. Reaching the conclusion to pay penal rent and ordering recovery from the DA of a pensioner are two different aspects. Rulings of the Courts are that administrative order which involves civil consequences, must be made

consistently with rules of natural justice. Principles of natural justice are implicit in the rules and even if it is not incorporated in the rules, the same would be read as part of the rule by necessary implication. It is also settled position of law that not able to answer is no explanation to deny the principles of natural justice. Admittedly, no notice was put to the applicant before passing the order under Annexure-A/3 dated 24.04.1997. Therefore, there is no option except to hold that the order under Annexure-A/3 dated 24.04.1997 is in violation of the principles of natural justice/Article l4 of the Constitution of India. Hence, the order under Annexure-A/3 dated 24.04.1997 is hereby quashed.

In the result, the OA stands allowed in the afore-stated terms. There shall be no order as to costs.

(B.B.Mishra)
Member(A)