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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 1480 OF 2003
Cuttack, this the 18th day of August, 2005

Sri Kuber Meher Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? 73
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 72


(M.R. MOHANTY)
JUDICIAL MEMBER

18/08/05


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 1480 OF 2003

Cuttack, this the 18th day of August, 2005

CORAM:

HON'BLE SHRI M.R.MOHANTY, JUDICIAL MEMBER
AND

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

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Sri Kuber Meher, aged about 64 years, son of late Madan Meher, Retired
Post Master, At-Panposh Bastee, P.O.Rourkela -4, Dist.Sundargarh

Advocates for the applicant - Applicant
M/s P.K.Mohapatra
& Sambit Mohanty

Vrs.

1. Union of India, represented by its Secretary, Department of Posts,
Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar.
3. Director, Postal Services, Sambalpur Region, Sambalpur 768 001.
4. Senior Superintendent of Post Offices, Sundargarh Division,
Sundargarh 770001.

Advocate for the Respondents - Respondents
Mr.B.Mohapatra, AGSC.

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ORDER
SHRI B.N.SOM, VICE-CHAIRMAN

Shri Kuber Meher has filed this Original Application against the order passed by the Director, Postal Services, Sambalpur Region, dated 25.2.2002, in pursuance of the direction of this Tribunal, rejecting his appeal against recovery of damage rent from him. The action of the Respondents has been assailed by the applicant as illegal, unjust, and unreasonable and hence he has prayed for quashing of the said order with exemplary cost.


2. The applicant had visited this Tribunal in earlier round of litigation in O.A. No.144 of 1995 and thereafter in OA Nos. 599 of 1997. This Tribunal, after hearing both the parties, disposed of O.A.No.599 of 1997 directing the concerned authority to consider the appeal preferred by the applicant afresh after giving him due opportunity "to show cause as to why the order of the Senior Superintendent of Post Offices should not be modified and/or enhanced to the effect of assessing the damage rent." In pursuance of the said direction, the Director, Postal Services, Sambalpur Region, by his order dated 25.2.2002 disposed of the representation dated 23.1.2002 filed by the applicant to the following effect:

".....Under the above circumstances, I see that the applicant has illegally overstayed in the post quarters of the SPM, Rourkela-4. Hence the damaged rent on an average Rs.55/- per

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sq.m. has to be recovered from the applicant. Vide Directorate of Estate, New Delhi letter No.18011/3/92-POL-III dated 30.5.95 the rate of damage rent has been prescribed. Accordingly total amount of Rs.33,655.00 should be recovered from the applicant @ Rs.55/- per sq.m. per month from 1.9.94 to 7.11.95. Since the same has already been ordered/recovered, the case is accordingly disposed of. Excess recovered amount if any may be refunded to the official.”

It is against this order that the applicant has filed this O.A. on several grounds as stated in paragraph 5 of the O.A. The most important ground that he has taken is that the assessment of damage rent at Rs.55/- per sq.m. of area by the appellate authority is illegal and not sustainable in law as the appellate authority has no jurisdiction because the competent authority had referred the matter to the Estate Officer and since then the same is subjudice ^{before} ~~in~~ the said ^{forum} ~~form~~, i.e., before the Estate Officer. He has further submitted that such assessment of damage rent can be made by the Estate Officer only under Section 7(2) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as ‘P.P.Act’) read with Rule 8 of the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971 (hereinafter referred to as ‘P.P.Rules’).



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3. We have heard the learned counsel for both the parties and have also perused the records placed before us.

4. We have carefully considered the issue of jurisdiction raised by the applicant in this O.A. as referred to above. On careful examination of the provisions of the P.P.Act and the P.P.Rules, we have no hesitation to accept that for eviction and imposition as well as realization of damage rent, actions/proceedings are to be taken under the said Act and Rules. In terms of the provisions of the P.P.Act it is the Estate Officer who has the jurisdiction to issue notice to show cause against the order of eviction and to evict unauthorized person and is vested with the power for the purpose of determination of damage rent. In this matter, the Estate Officer has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 and any appeal against the order passed by an Estate Officer shall lie in respect of any public premises to an appellate officer who according to Section 9 of the said Act shall be the District Judge of the district in which the public premises are situated or such other judicial officer in that district of not less than 10 years standing, as the District Judge may designate in this behalf. Thus, as the dispute involved in this case concerns public premises which were in occupation of the applicant, this Tribunal is devoid of jurisdiction to decide the matter. In the circumstances, this O.A. is not

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maintainable before this Tribunal and the same is accordingly disposed of, being without jurisdiction. The applicant, in the circumstances, is at liberty to take such action as he may deem fit and necessary under the provisions of the P.P.Act and the P.P.Rules. No costs.

Mohanty
18/08/05

(M.R.MOHANTY)
MEMBER(JUDICIAL)

B.N.SOM

(B.N.SOM)
VICE-CHAIRMAN