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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.738 OF 2005
CUTTACK, THIS THE ^{3rd} DAY OF OCTOBER, 2007

Jamuna Singh Applicant

Vs.

Union of India & Others Respondents

• FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *No* .
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No* .


(N.D.RAGHAVAN)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 738 OF 2005
CUTTACK, THIS THE 3rd DAY OF October, 2007

CORAM:

HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN

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Jamuna Singh Aged about 60 years 3 months son of Late Ramprit Ram Ex Care Taker under Deputy Chief Engineer/Doubling-II/Bhubaneswar, E.Co.Railway at present residing at Qr.No. A/3, Cuttack Railway Colony, At/P.O./Dist. Cuttack, PIN 753003.

.....Applicant

Advocate(s) for the Applicant - Mr. Achintya Das.

VERSUS

1.Union of India service through General Manager, E.Co.Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda, PIN 751023.

2 Financial Advisor & Chief Accounts Officer (Construction), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda, PIN 751023.

3 Financial Advisor & Chief Accounts Officer (Pension), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda, PIN 751023.

4 Deputy Chief Engineer, Doubling-II, E.Co. Rly., Chandrasekharpur, Bhubaneswar, PIN 751023.

.....Respondents.

Advocate(s) for the Respondents - Mr. O.N.Ghosh (for R-1 and 3),
Mr. Ashok Mohanty.

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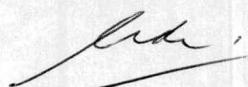


SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

This matter was listed for hearing on 28.3.2007, 18.4.2007, 15.5.2007 and 17.7.2007 and was adjourned from time to time on the request of the learned counsel for either side. On 17.7.2007 the matter was adjourned to 24.7.2007 when the learned counsel Mr.Achintya Das for the applicant and the learned Panel Counsels (Railways) M/s O.N.Ghosh and Ashok Mohanty remained absent due to advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar Association *—any foundation, etc.* resolutions passed without 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 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



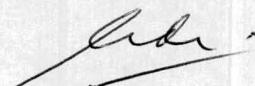
oriented profession. The relationship between the lawyer and his client is one of trust and confidence."

(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 Government 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.

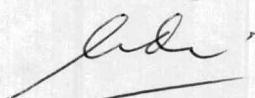
2. Brief facts of the applicant's case are that while working as Care Taker under the Deputy Chief Engineer Doubling-II, East Coast Railway, Bhubaneswar, he retired on superannuation w.e.f. 31.05.05. It is stated that the applicant was in occupation of Railway Quarters No. A/3 at Cuttack till 22.05.04 when he vacated the same on payment of usual H.R.A & Electrical charges regularly through salary bill. The applicant has submitted that while working as Care Taker at Cuttack under the Section Engineer (Works) Construction, he was transferred to Chandrasekharpur and accordingly spared on 21.09.98 (Annexure A/2). By another order dated 16.10.98 (Annexure A/3) he was again transferred to Gorakhnath. He was also permitted to retain the Railway quarters at Cuttack through verbal order as he was required to look after the Officers' Rest House at Cuttack during the visit of VIP's and resultantly, the allotment order of the said quarters was never cancelled. It is the case of the applicant that after his retirement he has received all the ~~retirement~~ dues except DCRG for Rs.1,23,649/- which was sanctioned on 28.05.05 (Annexure A/11). The applicant, on his preferring representation dated 10.06.2005 (Annexure A/12) to that effect, could come to know vide Annexure A/1 dated 04.08.05 about the proposal of recovering an amount of Rs.2,06,451/- towards damage rent for retention of Railway quarters for the period from 21.11.98 to 22.05.04. *frdc*

3. The applicant has contended that having been allowed to retain quarters at Cuttack, normal license fee and electrical charges were being recovered from his salary till the vacation of quarters by him on 22.05.04 and therefore, the retention of quarters cannot be said to be unauthorized. The allotment order having not been cancelled and/or the applicant having not been asked to vacate the quarters, far less initiation of eviction proceedings under Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the applicant cannot be said to have unauthorizedly occupied the quarters. The S.E. -1 (Works) E.Co. Railway. construction, Cuttack having issued clearance (Annexure A/10) that there is no dues to be recovered from the applicant, and that the withheld DCRG amount having been passed by the Financial Adviser & Chief Accounts Officer (Pension) (Annexure A/11), the withholding of such amount of DCRG is bad & illegal. In the above background, the applicant has prayed for the following relief :-

“8. Relief sought.

- 8.1 The Hon'ble Tribunal may kindly consider directing the respondents to pay the DCRG amount immediately.
- 8.2 The Hon'ble Tribunal may kindly consider directing the respondents to pay interest @ 12% against delayed payment of DCRG upto the date of actual payment.
- 8.3 To grant any other relief including cost as deem fit by the Hon'ble Tribunal.
- 8.4 To quash the order dated 4.8.05 issued by Dy.CE II/Doubling/BBS (AnnexureA/1).”

4. Respondent-Railways have filed their counter opposing the prayer of the applicant in the O.A. While narrating the facts, they have submitted that the applicant, at no point of time, was permitted to retain the quarters

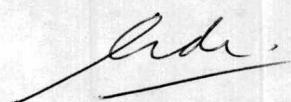


beyond the admissible period of retention and therefore, recovery of damage
rent from the applicant is justified.

5. Applicant has filed rejoinder to the counter. In the rejoinder, the applicant has based his case on the grounds that the Respondent-Railways did not ask him to vacate the quarters as his services at Cuttack were very much needed especially in view of the fact that nobody was posted against the vacancy; and that had he not been allowed to retain the quarters, normal license fee could not have been deducted from his salary.

6. The only point that emerges from the pleadings of the parties is whether the applicant was well within his right to retain the quarters from 21.11.98 to 22.05.04.

7. Admittedly, the applicant was transferred from Cuttack to Chandrasekharpur and was spared w.e.f. 21.09.98 and thereafter from Chandrasekharpur to Gorakhnath w.e.f. 16.10.98. There is nothing on record to show that the applicant had ever applied to the Respondent-Department for retention of the quarters beyond the permissible period after his transfer from Cuttack to Chandrasekharpur or Gorekhnath, as the case may be. Therefore, the only inescapable conclusion could be arrived at, that the applicant was in unauthorized occupation of the Railway quarters beyond the permissible period of two months after his transfer from Cuttack to Chandrasekharpur w.e.f. 21.11.98. The applicant, on his own risk and



responsibility, retained the Railway quarters beyond the permissible period without even approaching the Railway authorities for such retention. His plea that the Respondents never asked him to vacate the quarters at Cuttack as his services were required and nobody was posted in his place is an afterthought, because by his transfer to Chandrasekharpur, Bhubaneswar or Gorakhnath, his headquarters were changed and thereby his services could not have been required at Cuttack. The further plea of the applicant is that since he was not entitled to retention of quarters for two months from the date of his transfer from Cuttack, the Respondents should not have deducted normal license fee from his salary, holds no water because, as indicated above, the applicant having retained the quarters beyond the permissible period at his own risk and responsibility, cannot turn back to justify his action on the grounds as would suit to his convenience. Thus, it is a case where the applicant himself is the creator of his own destiny.

8. Apart from the above, the applicant, as revealed from the record, has nowhere stated about infringement of any rules or instructions in this regard by the Railway authorities while issuing the order of recovery of damage rent. Applicant has also not stated as to what right of his has been violated by the Respondents.

9. I have gone through the circulars of the Ministry of Railways filed by the applicant along with a memo. Annexures A/13, A/14, A/15 and A/16 are the instructions/guidelines issued by the Railway Board from time to time in



the matter of retention of Railway quarters. By virtue of paragraph 2 (ii) of the circular dated 20.4.2000 (Annexure A/13), presumably the applicant wants to submit that in his case since the occupation of Railway quarters was unauthorizedly continued beyond the period of retention permitted under the Rules, the allotment should have been cancelled and continued occupation declared unauthorized. At the cost of repetition, it is to be noted that this instruction by the Railway Board cannot absolve the applicant of his liability of paying the damage rent. Similarly, Annexure A/14 to A/16 also do not come to the rescue of the applicant.

10. Having regard to what has been discussed above, it is held that the applicant was not well within his right to retain the Railway quarters beyond the permissible period and by the proposed recovery of damage rent vide Annexure A/1 dated 04.08.05, the Respondents have not infringed any of the rights of the applicant nor has Annexure A/1 been issued in violation of any rules/instruction on the subject. Accordingly, Annexure A/1 dated 04.08.05 is not liable to be interfered with.

11. In the result, this O.A. is dismissed. No costs.


(N.D. RAGHAVAN)
VICE-CHAIRMAN

PPS

fix for pronouncement on
03.10.07 at P.M.

