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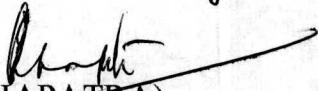
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 96 of 2006  
Cuttack, this the 08th day of February, 2008

Gandhi Tripathy ... Applicant  
Versus  
Union of India & Others ... 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 CAT or not? Yes.

  
(C.R.MOHAPATRA)  
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 96 of 2006  
Cuttack, this the 08th day of February, 2008

C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Gandhi Tripathy, Aged about 60 years,  
S/o. Late Jadumani Tripathy,  
Retired Postmaster, Qr.No.F-38/5,  
PO. Burla, Dist. Sambalpur. .... Applicants.

By legal practitioner: M/s. D.Mohapatra, R.P.Mohapatra,  
S.Panda, Advocates.

-Versus-

1. Union of India represented through its Secretary, Ministry of Communication and Information Technology, New Delhi.
2. Chief Post Master General, Orissa, P.M.G.Square, Bhubaneswar.
3. Post Master General, Sambalpur Region, Sambalpur.
4. The Superintendent of Post Offices, Sambalpur Division, At/Po/Dist. Sambalpur-768 001.
5. State of Orissa, represented through its Commissioner-Cum-Secretary, Water Resources Department, Bhubaneswar, Dist. Khurda.
6. Executive Engineer, Main Dam Division, Burla, Sambalpur.

... Respondents.

By legal practitioner: Mr. U.B.Mohapatra, SSC (Res.Nos.1 to 4)  
Mr. A.K.Bose, Advocate (Res.Nos.5&6)

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ORDER

MR.C.R.MOHAPATRA, MEMBER(A):

In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the Applicant has challenged the action of the Respondents 1 to 4 in withholding an amount of Rs.101251/- from his DCRG. It is the case of the Applicant that he retired on superannuation from Government service on 30<sup>th</sup> September, 2005 while working as Postmaster, Burla Post Office. While he was at Burla, he was in occupation of State Government quarters bearing No. F-38/5 which was allotted to him by the Office of the Superintending Engineer, Hirakud Dam Circle, Burla. Though he has been paid Pension and other pensionary dues, an amount of Rs.101251/- has been withheld from his DCRG by the Respondent No.4. Annexure-6 reveals that the Applicant was asked to pay Rs.98361/- to the Executive Engineer, Main Dam Division, Burla towards the House rent of the aforesaid Quarters No. F-38/5. Applicant submits that he was allotted the Qrs. No. F-38/5 at Burla by the Office of the Superintending Engineer, Hirakud Dam Circle, Burla vide Office Order No. Allot.Qrs-Burla/Temp/69 dated 20.12.1980

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(Annexure-1) and, he continued inoccupation of the said quarters till 03.03.1986. Due to his transfer from Burla, the allotment of quarters was cancelled with effect from 01.06.1986 by the Respondent No. 6 and penal rent was levied against him for the period 01.07.1986 to 21.02.1988. This amount was deposited by him. On his retransfer to Burla, the quarters, in question, was again allotted to him w.e.f 22.02.1988 vide Annexure-2 on usual rent and in this re-allotment order, no terms and conditions regarding penal rent to be charged in future was mentioned. Thereafter, on 17.07.2000, the Applicant was transferred to College of Agriculture, Chiplima Sub Post Office. He was not allotted any Government quarters in the campus of College of Agriculture, Chiplima Sub Post Office. According to Applicant, he did not avail of any transfer TA for the transfer from Burla to Chiplima. Hence he continued in occupation of the quarters at his old station at Burla on the strength of the re-allotment order dated 10.04.1989 (Annexure-A2). All on a sudden, on 11.02.2003 (Annexure-4) the Sub Divisional Officer, Right Bank Sub Division, Burla informed the Applicant that the allotment of the quarters has been cancelled by the Executive Engineer, Main Dam Division, Burla with effect from 08.10.2000 and he is liable to pay five times of the usual



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licence fee with effect from that date. As also he was given a notice to vacate and hand over the quarters to the office of Sub Divisional Officer, Right Bank Sub Division, Burla by 12.03.2003. The contention of the Applicant is that he has paid the rent of the house regularly. His representation against payment of penal rent was not considered. Before three months of his retirement, he got a letter from Respondent No.4 that an amount of Rs.98361/- was outstanding against him towards house rent and he was asked to clear the outstanding house rent immediately within a fortnight and report compliance; failing which disciplinary action as deemed proper will be taken against him. The Applicant further submits that he received a letter from Respondent No. 6 dated 26.11.2005 (Annexure-9) asking him to deposit Rs.1, 22,397/- as house rent by endorsing copies thereof to Respondent Nos. 2,3 and 4 with request to direct the Applicant to deposit the outstanding dues of house rent up to November, 2005, amounting to Rs.1,22,397/-. Acting at the behest of the Respondent No.6, the DCRG amount was not released in full. Applicant's grievance is that due to non-release of the DCRG amount, he is facing great financial hardship in managing the affairs of his family including education of his children. He, therefore, seeks relief in the form of a

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direction to the Respondents 1 to 4 to pay the entire retiral benefits and to quash the penal house rent imposed on him under Annexures-4 & 9.

2. In the counter Respondents 1 to 4 have stated that the Applicant was allotted the above mentioned quarters at Burla vide order dated 20.12.1980 (Annexure-R/1) with conditions that he should vacate the quarters within 15 days from the date of receipt of notice without assigning any reason thereof; failing to vacate the quarters within the stipulated period, he will be charged market rent penal rent for over stay in the quarters; in case of his transfer from Burla he has to vacate and hand over the quarters to the SDO Right Bank Sub Division within seven days of his relief; failing which necessary action will be taken to vacate the quarters as per rules and he will be held responsible for safe and proper handling of Government property such as fan and sanitary installations etc. He was also informed that he has to deposit the house rent regularly each month in the office of the Executive Engineer, Main Dam Division, Burla and in default of payment in any of the months the order of allotment will be cancelled. Pursuant to this, Applicant furnished an undertaking accepting these conditions put in under Annexure-R/1.



When the Applicant was transferred from Burla post office to Chiplima he did not intimate the fact to the allotting authority nor vacated the quarters. As a breach of conditions, the allotment of quarters was cancelled with effect from 08.10.2000 and damage rent was charged vide order under Annexure-R/2. Applicant did not pay any damage rent; for which an amount of Rs.101251/- was held up from the total assessed DCRG amount of Rs.201251/- of the Applicant. Respondents contend that withholding of DCRG is tenable within Rule 71 and sub rule 6 of Rule 72 of CCS (Pension) Rules, 1972 which empowers the Head of the Office/Pension Sanctioning Authority to adjust the dues of outstanding license fee without the consent of pensioner. They have therefore, prayed that there being no wrong on the action of the Respondents 1 to 4, this OA is liable to be dismissed.

3. Respondents 5 and 6 in their counter by relying on the allotment order dated 20.12.1980 have stated that the Applicant was continuing in the quarters in question till 03.03.1986. Due to his transfer outside Burla, allotment of quarters was cancelled with effect from 01.06.1986. Therefore, market rent/penal rent, as admissible from time to time, as per Rules, was imposed on the Applicant. Subsequently,

cancellation order of the quarters was withdrawn and the allotment of the said quarters was regularized with effect from 22.02.1988 on usual house rent vide Office Order dated 10.04.1989 (Annexure-C). It is their contention that no fresh undertaking at the time of regularization of the quarters was considered necessary as per their rules. They further submit that though the Applicant was transferred to Chiplima sub post office with effect from 07.07.2000, he did not report his transfer to them. They further maintain that as the Quarter belongs to State of Orissa, the allottee is bound by the State Government Rules and Regulations in this regard. Since the Applicant violated the terms and conditions specifically given in the allotment order dated 20.12.1980 and undertaking given by him, standard licence fee/five time standard license fee as per para 10(1) of the Finance Department Resolution No. 394/F. dated 04.01.1999 (Annexure-D) was imposed on the Applicant. It has been submitted that allotment of Government quarters is being considered on the basis of the Rules framed under O.S.C. and circulars of the Government of Orissa issued from time to time and not in accordance with the Rules/orders framed/issued by the Government of India. They have further maintained that the representations of the Applicant were considered by the

competent authority but did not find any reason to exempt the applicant from depositing the **outstanding house rent** of Rs.98,361/- On the above grounds, they have opposed the prayers of the Applicant and prayed for dismissal of this O.A.

4. Heard Mr. R.P. Mohapatra, Learned Counsel for the Applicant, Mr. Uma Ballav Mohapatra, Learned Senior Standing Counsel appearing for the Respondents 1 to 4 and Mr. Anup K. Bose, Learned Government Advocate, appearing for the Respondents 5 & 6 and perused the pleadings and materials placed in support of that on record.

5. During course of hearing, Learned Counsel for the Applicant submitted that the terms and conditions which were given in order dated 20.12.1980 had ceased to exist when the allotment of quarters was cancelled in 1986. Also when in order dated 10.4.1989 the same quarters was re-allotted no further terms and conditions were prescribed nor was there any indication that the conditions of allotment given in order dated 20.12.1980 will continue to govern the allotment/re-allotment of quarters. Further no opportunity was given to Applicant to give his version regarding the quantum of penal rent of the quarters on account of license fee. Hence, it is violative of principles of natural justice. He further

contend that no proceedings as per Act or Rules have been initiated declaring the applicant as unauthorized occupant. In support of the above contention, he has relied on the following decisions:

- a. Dr. Sagarika Das V. State of Orissa – 77 (1994) C.L.T (OATC) 59;
- b. Km. Neelima Misra V. Dr. Harinder Kaur Paintaland others – AIR 1990 SC 1402;
- c. Calcutta Dock Labour Board and Another v Smt. Sandhya Mitra and Others-1985 (Vol.2) SCC 1.

He further pointed out that it is illegal to cancel the allotment with retrospective effect without giving opportunity to him. It is contended that the quarters in question is belonging to State Government at Burla and it was purely a matter between the Applicant and the local authority of the Government of Orissa and, therefore, the amount claimed by Respondent No.6 cannot be recovered from the DCRG amount of Applicant being not the dues of Central Government.

On the other hand, Mr. Uma Ballav Mohapatra, Learned Senior Standing Counsel appearing for the Respondents 1 to 4 admitted that the quarters at the local level has not been allotted to the applicant through Respondents 1 to 4. He also did not admit the contention of Respondents 5 and 6 that the allotment was not a private arrangement. It has been argued by him that Respondents 1 to 4 have withheld 50% of the

DCRG amount of the Applicant at the instance of the State Government towards recovery of arrears of License fee and awaiting a no due certificate from the Applicant.

But it is the contention of Mr. A.K.Bose, Learned Government Advocate appearing for the Respondents 5&6 that the amount has to be recovered from the Applicant towards license fee on the strength of Rule 69 CCS (Pension) Rules 1972 as judicial proceedings relating to eviction for unauthorized occupation of quarters since 2000 are pending. He submitted that it was not at all a private arrangement between the Applicant and the local authority of the Government of Orissa. It was contended that it is not only the Applicant but also there were others who were defaulters in liquidating rental liability as would appear from Annexure-R/3. Like the Applicant many employees of the postal department were in occupation of the accommodation belonging to the State Government. Mr. Bose clarified that the rental recovery was not made through the pay bills of the individuals but this was being deposited directly by the individuals including applicant with the local authorities of the Government of Orissa. As the Applicant failed to comply with the terms and conditions, based on the Resolution of the Government of

Orissa dated 04.01.1999 (Annexure-D), license fee (House rent) was charged on him. Hence, there is no wrong on the orders passed by the Respondents 5 & 6 for recovery of license fee/penal rent from the applicant.

6. Considering various submissions made by the rival parties in support of their pleadings/materials placed on record, what is required to be resolved in this case is as to whether the Respondents 1 to 4 have acted within the ambit and scope of CCS (Pension) Rules, 1972 in withholding part of the gratuity amount to the tune of Rs.101251/- payable to the applicant soon after his retirement from Government service. In this regard the relevant provisions are contained in Rule 71 of CCS (Pension) Rules, 1972 which are quoted here-in-below:

“71. Recovery of adjustment of Government dues.

(1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2) The **Government dues** as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government Servant, shall be adjusted against the amount of the [retirement gratuity] becoming payable.

(3) The expression '**Government dues**' includes-

(a) dues pertaining to Government accommodation including arrears of licence fee, if any;

(b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961).

7. Presumably, the Respondents 1 to 4 have considered the amount claimed by the Respondents 5& 6 as '**Government dues**' on account of arrears of licence fee (Penal Rent) towards State Government accommodation. Sub-Rule (h) of Rule-3 of CCS (Pension) Rules, 1972 defines "**Government**" which means the "**Central Government**". "**Government dues**" means as defined in sub-rule (3) of Rule 71. It would be reasonable to assume that such dues are dues to be paid to the Central Government and which can be recovered by the Central Government under due process of Law. Rule 72 of CCS (Pension) Rules, 1972 further makes provision regarding adjustment and recovery of dues pertaining to Government accommodation. The Government accommodation here would necessarily mean the accommodation which belongs to Central Government administered by the Central Government. Hence the no demand certificate can be demanded only with reference to this type of allotment of accommodation belonging to Central

Government. Rule 57 of the CCS (Pension) Rules, 1972 is relevant in this regard and they are extracted herein below:

“57. Intimation to the Directorate of Estates regarding issue of ‘No Demand Certificate’.

- (1) The Head of Office shall write to the Directorate of Estates at least two years before the anticipated date of retirement of the Government servant who is in occupation of a Government accommodation (hereinafter referred to as allottee for the issue of a ‘No demand certificate’ in respect of the period proceeding eight months of the retirement of the allottee.
- (2) On receipt of the intimation under sub-rule (1) the Directorate of Estates shall take further action as provided in Rule 71.”

8. From various documents placed on record it is evident that the Applicant has obtained the allotment from the local authority of the Government of Orissa at his own level and it was not an intergovernmental arrangement between the State Government and Central Government. When the allotment was initially made in 1980 and subsequently re-allotment was made in 1989 no steps were taken by the concerned State Government authorities to obtain acquiescence of the authority in the Department of Post at appropriate level regarding the rental liability to be liquidated by the occupant of the Postal Department. In view of this, the matter has turned to be a dispute between the

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 Applicant and the local authorities of the Government of Orissa. I find no provision in the CCS (Pension) Rules, 1972 empowering the Central Government (Department of Posts) to enforce the recovery of the penal rent/ licence fee amount from the pensionary benefits of Applicant for payment to the Respondents 5 & 6.

9. In the afore-mentioned circumstances, it would be reasonable to hold that the Respondents 1 to 4 have not acted as per the provisions of CCS (Pension) Rules, 1972 in holding on to a part of the gratuity amount of the Applicant. The withheld amount of DCRG therefore, needs to be released forthwith. Ordered accordingly.

10. Since the matter regarding quantum of penal rent charged by Respondents 5&6 is in dispute by the Applicant on various grounds brought out in this OA, it is considered that this dispute can best be resolved between the Applicant and the Respondents 5 & 6 by adherence to the due process of law.

11. In the result, this OA is partly allowed. Parties to bear their own costs.

*Chandra*  
 (C.R.MOHAPATRA)  
 MEMBER (A)

KNM/PS.