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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O A NO. 640 of 2002
Cuttack, this the 30th day of April, 2004

Biswanath Hota

Applicants

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not? NO

2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO


(D.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 640 OF 2002
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CORAM:

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

Sri Biswanath Hota, IPS, aged about 57 years, son of Jagannath Hota,
working as D.I.G. of Police, State Headquarters, Orissa, At/PO Buxibazar,
Cuttack, Dist.Cuttack Applicant

Vrs.

1. Union of India, represented through the Secretary, Ministry of Personnel & Training, New Delhi.
2. State of Orissa, represented through the Commissioner-cum-Secretary to Government, Department of Home, Orissa Secretariat, At/PO Bhubaneswar, Dist.Khurda.
3. Director General and Inspector General of Police, Orissa, Orissa Police State Headquarters, At Cantonment Road, P.O.Buxibazar, Dist.Cuttack.
4. Inspector General of Police (Finance), Orissa Police State Headquarters, At Cantonment Road, P.O.Buxibazar, Town & Dist.Cuttack

..... Respondents.

Advocate for the applicant - Mr.H.P.Rath
Advocate for the Respondents - Mr.B.Dash, ASC and
Mr.T.Dash, GA.

O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Biswanath Hota, an officer of Indian Police Service, Orissa Cadre, working D.I.G. of Police, Berhampur, has filed this Original Application, being aggrieved by the action of the Respondents in imposing on him a levy of Rs.29,520/- for retention of Government quarters No.CB-17-B/1, Cantonment Road, Cuttack, beyond the permissible period on his transfer

from Cuttack to Berhampur. The period involved is from 26.8.1999 to 5.8.2000. He has approached this Tribunal seeking the relief to quash the impugned orders at Annexures 5 and 6 and to allow the application with costs.

2. The facts of the case, in a nutshell, are that the applicant, while working as D.I.G. of Police, Cuttack, was transferred as D.I.G. of Police, Southern Range, Berhampur, on 25.8.1999. At that time he was in occupation of Government quarters as particularized above at Cuttack. On being relieved on 25.8.1999 from his charge at Cuttack he joined his assignment at Berhampur on 26.8.1999. He did not hand over the quarters to the concerned authority as his family consisting of his son and wife were staying there for the purpose of continuing education of his son and as his wife was seriously ill. He received a FAX message from the office of Respondent No.3 on 28.6.2000 calling upon him to vacate the said quarters by 10.7.2000. He was also informed that he was occupying the said quarters in an unauthorized manner. The applicant sought time till 10.8.2000 to vacate the quarters. However, he actually vacated the quarters on 6.8.2000, after which the Respondents asked him to pay, by their office order dated 20.9.2000, an amount of Rs.72,390/- on account of license fee and penal license fee from 26.8.1999 to 5.8.2000. The applicant made a representation to the Government on 24.10.2000 protesting against this imposition of penal license fee upon which the Respondents revised their order by passing an order dated 21.2.2002 by which time the applicant was allowed to retain the quarters in

question from 26.8.1999 to 31.5.2000 on payment of flat license fee for first four months and thereafter standard license fee till 30.5.2000 and for the period beyond 1.6.2000 to 5.8.2000 at penal license fee rate and accordingly he was called upon to pay Rs.29,520/- (Annexure 5). The applicant has assailed the said order dated 21.2.2002 as unreasonable and bald order being discriminatory in nature and violating Articles 14 and 16 of the Constitution. He has argued that had the Respondents refused him retention of the quarters immediately in consideration of his request, then he would have vacated the quarters then and there and would not have been faced with the order of levy of penal license fee. He has also challenged the cancellation order in respect of his quarters, which was passed on 29.8.2000 much after the vacation of the quarters by him, with retrospective effect. Referring to the Hon'ble Apex Court decision in the case of *Nilima Mishra v. Harindar Ku. Paintal and others*, reported in AIR 1990 SC 1402, he has argued that the Respondents, without affording him opportunity to defend his case, served on him an administrative order involving ^{civil} consequence which has seriously prejudiced his interest.

3. The Respondents have resisted the O.A. on several grounds. In the first instance, they have stated that the rules concerning allotment and fixation of license fee for residential accommodation to Government employees under Government of Orissa having been published in the Gazette, these rules are statutory in nature and are within the knowledge of the Government employees. By virtue of Paragraph 10(1) of the Finance Department

Resolution dated 4.1.1999, an official transferred from his station is allowed to retain Government quarters for one month from the date of relief on payment of flat license fee. In the circumstances, the plea of the applicant that he was not asked to vacate the quarters is unsustainable in the eye of law. However, on receipt of his representation, the Respondents in terms of paragraph 10(ii) of the said resolution had allowed him the benefit of retention of quarters till 31st May of the following year as he was posted after 1st August 1999. The Respondents have also stated that all considerations have been shown to the applicant and his liability has been assessed in terms of the provisions of the resolution dated 4.1.1999 at Annexure R-2/1. The Respondents have also denied the allegation of discrimination.

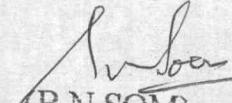
4. I have heard Shri H.P.Rath, learned counsel for the applicant and Shri T.Dash, the learned Government Advocate appearing for the State of Orissa and Shri B.Dash, the learned Additional Standing Counsel for Respondent No.1. The learned counsel for the applicant had also filed a rejoinder to which Respondent No.2 had filed additional counter. The applicant had filed an additional rejoinder also enclosing therewith a copy of the Government's letter dated 6.1.2004 disposing of the representation of Shri Sanjeeb Marik, IPS, I.G.of Police,Orissa,with regard to waiver of penal license fee for the period from 4.2.1997 to 31.8.2000.

5. Without going into the detailed arguments and counter-arguments of the rival parties, it would suffice to say that at the end the matter boiled down to the prayer made by the applicant that the Respondents be directed to

reconsider his representation regarding imposition of penal rent for retention of quarters beyond 31.5.2000 strictly along the lines in which the Respondents have considered the representation of Shri Sanjeeb Marik, IPS, IG of Police (Finance), Orissa. The case of Shri Marik is that he was in occupation of Government Quarters at Cuttack from 8.5.1995 to 31.8.2000. During this period he was not posted at Cuttack. As it is apparent from Annexure 9 placed before me by the applicant, the State Government were pleased to allow Shri Marik to pay standard license fee instead of penal license fee for the period from 4.2.1997 to 31.8.2000 as a special case. The applicant in his rejoinder dated 2.7.2003 had levelled allegations at paragraph 5 quoting names of several IPS officers who were allotted similar type of quarters and were allowed to retain those quarters even after their posting out of the station where the quarters were located. The Respondent No.2 by filing reply to the rejoinder, in paragraph 4 of their reply, has denied the allegations in respect of Shri P.C. Mishra, but in respect of three other officers they have submitted that those officers are liable to pay enhanced rate of flat license fee as revised from time to time and that the Director General and I.G. of Police, Orissa, Cuttack had issued necessary instructions to recover the rent at the enhanced rate. However, the applicant did not mention the case of Shri Sanjeeb Marik in the rejoinder to the counter. Thereafter he filed an additional rejoinder where he made allegation that one Sri Sanjeeb Marik has been given waiver from payment of penal rent, as stated earlier. No reply has been filed to this by Respondent No.2. During oral arguments also no light could be

thrown in this regard by the learned Government Advocate appearing for the State of Orissa. Be that as it may, it would suffice if I dispose of this O.A. with a direction that the prayer of the applicant may be reconsidered by Respondent No.2 in the light of the decision that they have taken in the case of Shri Sanjeeb Marik, IPS, IG of Police (Finance), Orissa, and pass an appropriate order within a period of 60 days from the date of receipt of copy of this order. As Respondent No.2 has made an exception in the case of one officer, it would be difficult for them to deny the same consideration to similarly placed other officers. They may accordingly review the case of Shri S. Marik, IPS and that of the applicant keeping this wider implication of giving special consideration to an individual case without specifying the special reasons for deviating from the provisions of the resolution dated 4.1.1999.

6. With the above observation and direction, the O.A. is disposed of. No costs.


(B.N.SOM)
VICE-CHAIRMAN

AN/PS