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OA 14/03

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

On 17.3.04

for Admission &
Hearing.Respondent not
present.

18/3

Bund

On 23.3.04

Copies of order
communicated to
all reports and copies
of order prepared
for consents for
SOM side.

Bo 54/03

Order Dated 23.03.04

The Applicant, having faced transfer from Bhubaneswar to Nayagarh, represented to the authorities raising grievances pertaining to his transfer. He also approached this Tribunal in an earlier O.A. No. 574/02 and, by order dated 02.07.2002, he was granted liberty to approach his higher authorities; which he did. It appears, the CPMG of Orissa did not accept his prayer for cancellation of his transfer and, as a result thereof, the Applicant has gone to join at the new station, where he is continuing to serve the Department, while still continuing to retain the Govt. Quarters (bearing No. 2, Type-2 of Unit-4 P & T Colony at (Bhubaneswar) allotted to him at his previous station (Bhubaneswar). After permitting him for 8 months, the Respondent Department asked him (under Annexure-2 dated 03.01.03 to the O.A.) to vacate the quarters. In the said premises, the Applicant has approached this Tribunal (Under Section 19 of the Administrative Tribunal Act, 1985) in the present Original Application.

2. In the counter filed by the Department, it has been disclosed that the Department, having discretion, allowed the Applicant to retain the Quarters for a maximum period of 8 months and have not permitted him to retain the quarters thereafter (after lapse of 8 months) in the absence of any discretionary powers vested with them.

3. Heard Mr. B.S. Tripathy, Ld. Counsel appearing for the Applicant and Mr. B. Dash, Ld. Addl. Standing Counsel representing for the Respondents.

4. It appears from the counter that Department has certain regulatory measures to allow a Govt. Servant to retain the quarters, even after his transfer to different station, for a maximum period of 8 months and there are absence of any rules, vesting powers with the

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authorities, to allow such a Govt. servant to retain the quarters beyond 8 months. When a statutory rule is silent, the executive are to exercise ^{discretion} ~~direction~~ (and in the said premises, such executive action would be statutory in ~~character~~ under Article 73 of the Constitution of India.) and, unless the discretions are exercised, no relief can be granted.

5. In the present case, it appears, the prayer of the applicant to retain the quarters beyond 8 months have not received the consideration of the highest authorities of the Postal Circle of Orissa. In absence of any statutory Rules, the highest authority of the Postal Circle of Orissa, has to exercise his discretion in the matter and, therefore,

without keeping this case pending, liberty is hereby granted to the Applicant to re-represent his case (for retaintion of quarters in ~~question~~ question) to the Chief Post Master General of Orissa by giving all possible reason and, if such a representation is filed by 12th of April, 2004, the CPMG of Orissa should give due consideration to the matter and in the absence of any rules (as stated in the counter), the CPMG (Orissa) should exercise his full discretion in the matter and pass necessary orders. Till orders are passed by the CPMG, the retaintion of the quarters in question by the Applicant shall be treated as lawful retention.

6. With the aforesaid observation and direction, this O.A stands allowed.

7. Send copies of this Order to the Respondents and free copies of this Order be also given to the Counsels appearing for both parties.

Y. S. S.
23/03/04
MEMBER (JUDICIAL)