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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.161 OF 2007

Cuttack, this the 3.RD..... Day of OCTOBER 2007

Abdul Rafique Khan..... Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

5. Whether it be referred to reporters or not? *Yes*
6. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *Yes*

Adr.
(N. D. RAGHAVAN)
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.161 OF 2007
Cuttack, this the 03rd Day of October, 2007

CORAM:

HON'BLE SHRI N.D. RAGHAVAN, VICE-CHARMAN

IN THE CASE OF:

Abdul Rafique Khan, aged about 49 years son of Late Baba Khan at present Havildar, Central Excise, Customs & Service Tax, Bhubaneswar- III Range, Bhubaneswar.

..... Applicant

By the Advocate(s) M/s A.K. Bose,
D.K. Mallick,
P.K. Das.

Vs.

1. Union of India represented by the Secretary to Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-11.
2. Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar-1 Central Revenue Building, Bhubaneswar-751001.
3. Addl. Commissioner(P&V), Central Excise, Customs & Service Tax, Bhubaneswar-1.
4. Deputy Commissioner, Customs, Customs House, Paradeep, Dist- Jagatsinghpur.

..... Respondent(s)

By the Advocate(s)..... Mr.U.B. Mohapatra.



ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

This O.A. was filed on 19.4.2007. By order dated 20.4.2007 notices on the question of admission were directed to be issued to the Respondents. Counter was filed by the Respondents on 26.7.2007, after which the O.A. was placed before the Bench on 6.8.2007 when the learned counsels for the parties remained absent and in order to give one more chance, the matter was adjourned to 24.8.2007. On 24.8.2007 the matter was adjourned to 17.9.2007 at the request made by the learned counsel for the applicant. On 17.9.2007 the learned counsels M/s A.K.Bose, D.K.Mallik and P.K.Das for the applicant and the learned Senior Standing Counsel Mr.U.B.Mohapatra for the Respondents ~~remained absent due to~~ remained absent due to advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar Association resolutions passed without ^{any foundation, etc.} 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

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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)

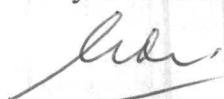
"In future, the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self imposed dereliction of his advocate. The litigant who suffers entirely 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. The sequence of events, as revealed, are that the applicant, while working as a Havildar, Customs House at Paradip, vide order dated 3.6.2004 (Annexure R/4) was transferred to Bhubaneswar-III Range where he joined in the said month/June 2004. After joining at Bhubanesar, the applicant made a representation dated 28.10.2004 (Annexure A/3) addressed to the Commissioner, Central Excise & Customs,Bhubanesar (Respondent No.2) requesting for permission to retain the Government accommodation that was allotted to him at Paradip till June 2005. Annexure A/4 dated 15.11.2004 is another representation of his ^{ur} addressed to Respondent No.2, reiterating the same request for retention of quarters at Paradip till June 2005. Anenxure A/5 dated 16.3.2005 is a representation to Respondent No.2, by which the applicant seems to have sought permission to shift his family to Bhubaneswar in the first week of July 2005. While the matter stood thus, the applicant, vide Annexure A/1 and A/6 dated 15.4.2005 made a representation addressed to the Joint Commissioner, Central Excise & Customs, Bhubaneswar, praying for his posting back to Paradeep. AnnexureA/8 dated 9.6.2006 is a communication from the office of

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Respondent No.4 to the Assistant Chief Accounts Officer, Central Excise, Customs & Service Tax, Bhubaneswar (under intimation to the applicant) to issue necessary directive for vacation of the quarters since the retention of quarters by the applicant was considered up to June 2005 and the quarters in question was not vacated by the applicant as on date. It reveals from Annexure A/2 dated 22.7.2005 that the Superintendent, Central Excise & Customs, Bhubaneswar III Range has favourably recommended the case of the applicant to the Joint Commissioner, Central Excise & Customs, Bhubaneswar, regarding retention of the quarters at Paradip based on his representation dated 28.10.2004 (Annexure A/3). The applicant thereafter filed another representation dated 27.7.2005 (Annexure A/7). It further reveals from the record that vide Annexure A/11 dated 17.10.2006 the Administrative Officer, Central Excise, Customs & Service Tax, Bhubaneswar, was requested to recover an amount of Rs.65,748/- from the applicant towards HRA as per the calculation sheet appended thereto. Against this, the applicant seems to have preferred representation dated 4.12.2006 (Annexure A/9) agreeing to pay double the license fee @ Rs.286/- per month for retention of the quarters for the period from 22.2.2005 (i.e., the date when the 8 months period expired) till 10.7.2006 when he vacated the quarters. By Annexure A/10 dated 28.3.2007 the applicant's representation dated 4.12.2006 seems to have been rejected holding that in view of the Ministry's letter dated 5.2.2007 no waiver of penal/damage rent



for unauthorized occupation of accommodation is permissible. Hence this Original Application with the following prayer:

“8. Relief(s) Sought:

That the Orders under annexures A/10 & A/11 be quashed and it may be observed that the department is not entitled to recover any amount on the ground of unauthorized occupation of the quarter.”

3. The Respondents have filed their counter opposing the prayer of the applicant. While admitting the sum and substance of the facts, they have submitted that the applicant was allowed to occupy the quarters up to 10.7.2006 on payment of normal license fee from 22.6.2004 to 21.8.2004, double the license fee from 22.8.2004 to 21.2.2005 and market rent from 22.2.2005 to 10.7.2006 as per the allotment rules of the Department and therefore, the applicant is liable to make payment of the damage rent as levied on him. The Respondents have, therefore, submitted that the there being no merit in the O.A., the same is liable to be dismissed.

4. No rejoinder has been filed by the applicant to the counter.

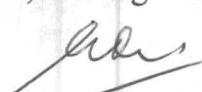
5. This matter was taken up on 20.4.2007 for admission. While directing issuance of notices to the Respondents, the Tribunal as an interim measure stayed the operation of Annexures A/10 and A/11. This interim order is continuing till date.

6. From the pleadings of the parties it reveals that after joining at Bhubaneswar on transfer from Paradip in June 2004 the applicant has been representing to the Respondents for retention of quarters till June 2005, for

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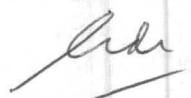
his posting back to Paradip, and for extending the period of retention of quarters at Paradip beyond June 2005, but the Respondents appear to have passed no order on those representations either. It reveals from Annexure A/8 dated 9.6.2006 that the office of Respondent No.2 perhaps recommended consideration of retention of quarters by the applicant up to June 2005 but not beyond that by letter dated 30.6.2005. But this letter has not been produced by the Respondents to show as to under what terms and conditions such permission for retention of quarters was accorded in favour of the applicant up to June 2005. Be that as it may, the Respondents have also not produced the quarters allotment rules governing the retention of quarters beyond the permissible period. Admittedly, the applicant vacated the quarters at Paradip on 10.7.2006 and he has been imposed with normal license fee, double the license fee and market rent from June 2004 till vacation of the quarters in view of the Ministry of Finance's letter dated 5.2.2007 (Annexure R/4). The applicant seems to have not grounded upon his contentions in the O.A. so firmly, except some flimsy grounds. The entire pleadings seem to be a hide and seek game by the applicant to which the Respondents have wholeheartedly participated. Because, had it not been so, the applicant's representation dated 28.10.2004 (Annexure A/3) for retention of quarters till June 2005 could have been replied soon thereafter by the Respondents and the matter would not have reached thus far, leaving room



to the applicant to go on making representation after representation on some ground or the other.

7. However, the Respondents have arrived at conclusion based on Annexure R/4 dated 5.2.2007 and the purported decision in that behalf emanates from Annexure A/10 dated 29.3.2007 and Annexure A/11 dated 10.7.2006 which are impugned herein.

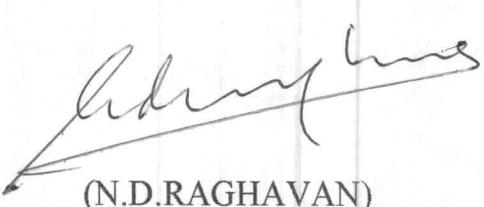
8. From the above, the primary point to be considered is whether the applicant was allowed retention of quarters on the basis of his representation and if so, under what terms and conditions. The Respondents have not produced even a scrap of paper to show that they had allowed retention of quarters up to certain period, far to speak of terms and conditions as well as the consequence of retention of quarters beyond the permissible period. This being the situation, the applicant, under the bona fide belief, retained the quarters till 10.7.2006, when he vacated the same. This apart, the Respondent-Department are yet to take any initiative declaring the applicant an unauthorized occupant. Therefore, the interference that only could be drawn is that unless and until the applicant is declared unauthorized occupant, no penal or damage rent can be levied. Besides, the Respondents have also not served any show-cause notice on the applicant asking him to show cause as to why he should not be levied with penal rent for retention of Government quarters beyond the permissible period. Inaction of the Respondents on all these aspects would go to show



that their decision in imposing penal rent vide Annexures A/10 and A/11 is an unilateral one and the same is unsustainable.

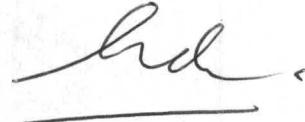
9. Having regard to what has been discussed above, I am of the view that the orders dated 10.7.2006 and 29.3.2007 (Annexures A/10 and A/11) amount to unjust imposition on the applicant and accordingly, the same are quashed.

10. In the result, the Original Application is allowed. No costs.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

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fix for pronouncement.


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