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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 270 of 2007
Cuttack, this the ~~07th~~ day of May, 2008

Nabin Bihari Mohanty Applicant.
Versus
Union of India & Ors. Respondents

For instructions

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?.


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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C O R A M:

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

Nabin Bihari Mohanty Applicant.
Versus
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(For Full details, see the enclosed cause title)

By legal practitioner: Ms.P.K.Padhi, Counsel.
By legal practitioner: Mr. O.N.Ghosh, Counsel.

O R D E R

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

According to the Applicant, he was in occupation of Railway quarters, while working as Chief Permanent Way Inspector at Kalupadaghat. Assistant Engineer (South), S.E. Railway, Khurda Road issued a letter dated 09.03.1998 directing the Applicant to report to Chief Project Manager (Construction), Chandrasekhpur immediately for further posting. On his reporting, the Chief Project

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Manager (Construction) directed the Applicant to work under Senior Project Manager-III, Sambalpur. The Applicant reported to Construction Organization on 11.03.1998 and on the following day i.e. on 12.03.1998 orders were passed for his journey from Bhubaneswar to Sambalpur. Thereafter, according to him, vide order dated 31.03.1998, the Senior Divisional Personnel Officer directed him to report to Senior Divisional Engineer (Co-ordination), Khurda Road for his further posting. But no posting order was issued to him till 25.10.1999 when the Senior Divisional Engineer posted him as Chief Permanent Way Inspector in his office with effect from 19.06.1998 with the existing pay, grade and capacity. Applicant, being aggrieved by such order dated 25.10.1999 especially for such retrospective implication, on 8.11.1999, approached the Divisional Railway Manager, S.E. Railway, Khurda Road seeking permission to retain the Railway quarters on normal rent up to May, 2000 as his son was reading in Kalupadaghat High School. On 09.11.1999, the Senior Divisional Engineer (Co-Ordination) directed the Applicant to accompany the Accident Relief Train till another incumbent is posted.



While the matter stood thus, damage rent, for the period from 19.06.1998 to 31.10.1999, amounting to Rs. 1, 04,042/- was imposed, on the Applicant for unauthorized retention of Railway quarters at Kalupadaghat. Challenging the said order of recovery of damage rent, the Applicant approached his authority. As no action was taken on such representation, he approached this Tribunal in OA No. 635/1999. Relevant portion of the order of this Tribunal dated 7th July, 2000 is quoted herein below:

“6. As this period is to be treated as temporary transfer, the applicant will be entitled to retain his quarters at Kalupadaghat from 19.6.1998 till 25.10.1999 or till 31.10.1999 as has been mentioned in the order at Annexure-5. As the Railway servant is entitled to keep his quarters during the period of his temporary transfer levy of damage rent for the period from 19.6.1998 to 31.10.1999 is obviously without any legal justification.

7. This order at Annexure-5 is liable to be quashed also on another ground. Even if it is taken for argument sake that the applicant was permanently transferred from Kalupadaghat to Khurda Road on 19.6.1998 in accordance with the order dated 9.3.1998 or the order dated 31.3.1998, he is entitled to retain his quarters after his relief from the old duty post. Damage rent cannot be charged immediately after his joining the new post when before joining the applicant was on sick leave and thereafter he availed joining time.

8. In consideration of all the above, we hold that the order at Annexure-5 is legally not sustainable and the same

is quashed. The Original Application is accordingly allowed.
No costs."

2. It is the further case of the Applicant that in spite of the aforesaid order of this Tribunal, damage rent amounting to Rs.1, 25, 000.00 was recovered from the pay of the Applicant till January, 2002. Being aggrieved with such recovery, the Applicant moved CP No. 33 of 2001 however, after receipt of notice in the CP, on 03.04.2002, the Respondent-Department sanctioned Rs. 52,822/- in favour of Applicant. By filing the show cause, in the CP, the Respondents/Opposite Parties disclosed that they charged the normal rent from 19.6.1998 to 25.10.1999 and as the applicant did not vacate the quarters, damage rent was to be charged from 26.10.1999 to 09.09.2000 (i.e. the next day of transfer to the date of vacating the quarters). The normal rent for the period from 19.06.1998 to 25.10.1999 comes to Rs.3407/- and damage rent from 26.10.1999 comes to Rs.68, 775/-. Further case of the Applicant is that while he was continuing under temporary transfer, vide order dated 31.3.2000 (Annexure-7), he was permanently transferred to Rambha where he reported to his duty on 05.04.2000. It is the case of the Applicant that

the quarters meant for the Applicant was vacated by his predecessor only on 21.07.2000. As the quarters was not habitable for the stay of the Applicant, after its repair, the same was occupied by the Applicant on 10.09.2000. During 2003 by submitting representation the applicant had sought to refund the deducted damage rent amounting to Rs. 68,775/- followed by several reminders and pleader's notice. Having failed to get back the money, he had approached this Tribunal in OA no. 598/03. This matter was heard and disposed of by this Tribunal on 29.09.2003 directing the Applicant to submit a fresh representation to Respondent No.3 and the latter was directed to consider the said representation of applicant within a period of sixty days. Pursuant to the aforesaid order of this Tribunal, the Applicant submitted his claim before the Respondents. The Respondent No.3 rejected the claim of the Applicant and communicated the result in letter dated 26.04.2006 under Annexure-A/11 which is now challenged by the Applicant in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 praying the following:

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“....to quash Annexure-A/11 and further be pleased to direct the Respondents to refund Rs. 68,775/- along with 18% compound interest per annum from the date of recovery from the Applicant;

And further direct the Respondents to fix the responsibility on the defaulting official and impose exemplary punishment and impose heavy cost against defaulting officials.

And any other order/orders as the Hon'ble Tribunal deems just and proper in the interest of justice.”

3. Respondents have filed their counter in which it has been stated that this Tribunal vide its order dated 7th July, 2000 quashed imposition of damage rent for the period from 19.6.1998 to 25.10.1999. In compliance of the above orders of this Tribunal, only normal rent was charged on the applicant but, as the Applicant did not take permission to retain the quarters beyond 25.10.1999, damage rent for the period from 26.10.1999 to till vacation of the Railway quarters at Kaluparaghata i.e. 9.9.2000 was charged and accordingly, an amount of Rs. 72, 178/- (Rs.3,403 towards normal rent for the period from 19.06.1998 to 25.10.1999 and Rs.68,775/- towards the damage rent for the period from 26.10.1999 to 09.09.2000) was sought to be recovered from the Applicant. As damage rent amounting to Rs.

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1,25,000/- was recovered from the pay of Applicant towards damage rent for the aforesaid periods, after the order of this Tribunal dated 7th July, 2000, the excess amount of Rs. 52,822/- was refunded to the Applicant. Respondents have further stated that in case of any temporary transfer where no further order was issued after 180 days, then the temporary transfer is automatically treated as permanent transfer as per rules. Hence levy of damage rent cannot be treated as illegal or unauthorized one. They have, therefore prayed for dismissal of this OA.

4. Applicant has filed rejoinder in which it has been stated that after initial order of his temporary transfer, the applicant represented on 8.11.1999 to retain the quarters up to the end of academic sessions i.e. May, 2000 as his son was studying in Kalupadaghat High School. As his temporary transfer was extended vide order dated 09.11.1999 his family remained under occupation of the said quarters. Further it has been stated that as per the decision in the case of Raghunath PD Srivastava v Union of India and others (434 SwamyS CL Digest 1996/2, page 632) damage rent cannot be

imposed for unauthorized retention of quarters by an authority other than the Estate Officer under P.P.E. Act. Hence, imposition of damage rent, in the present case, by an authority other than the Estate Officer is not sustainable in the touch stone of judicial scrutiny. In support of his plea that the quarters only after its repair was allotted in his name at a later date, he has placed on record the letter No. SR/1/Pt.II/238 dated 24.7.2000 and Office Order No. 2000/85 dated 21.08.2000 and I have gone through the same.

5. Having heard the arguments put forth by the parties perused the materials placed on record. It is needless to record all those arguments; as these were the reiteration of the stand taken in their pleadings as recorded above. From the above the sole question spiraled for consideration in this Original Application as to whether during the period of temporary transfer exceeding 180 days, one is entitled to retain the quarters, in his old station and as to whether it is for the employee to seek for such retention, in writing or it is obligatory. First question is redundant in view of the order of this Tribunal holding as under:

"6. As this period is to be treated as temporary transfer, the applicant will be entitled to retain his quarters at Kalupadaghat from 19.6.1988 till 25.10.1999 or till 31.10.1999 as has been mentioned in the order at Annexure-5. As the Railway servant is entitled to keep his quarters during the period of his temporary transfer levy of damage rent for the period from 19.6.1998 to 31.10.1999 is obviously without any legal justification.

6. As regards, the second question, it is worthwhile to mention that when this Tribunal in order dated 7th July, 2000 held that during the period of temporary transfer of applicant he is entitled to retain the quarters at his old station and imposition of damage rent was unjustified, the Respondents ought to have passed the permanent order of transfer or after completion of 180 days he should have been noticed that for non-vacation of the quarters after 180 days he is to be charged with damage rent. Neither any such order was placed on record by the Respondents nor any such rule showing that in the case of temporary transfer even one is not entitled to retain the quarters at his old station. Respondents have also not placed any materials contradicting the stand of the Applicant that he was permanently transferred to Rambha only on 31.03.2000. It is also not the case of the Respondents that he was offered any such quarters at his new

place of posting but he refused. Hence non-submission of formal request of Applicant, cannot be a ground to claim damage rent from the Applicant. Therefore, charge of damage rent during the period the Applicant was under order of temporary transfer is not sustainable.

7. It is a fact that on 31.3.2000, the Applicant was permanently transferred to Rambha. As per the normal Rules he is entitled to retain the quarters, on normal rent, at his old station for two months i.e. up to the end of May, 2000. The only point was that he had not sought specific permission for the same. Keeping in view the frequent orders of attachment at different locations such a requirement appears to be a case of misplaced formality and should have been allowed. As a matter of fact he had already applied for retention up to May, 2000 on the ground of study of his son. However, for retention of quarters beyond 31.5.2000 he ought to have sought the necessary permission. Hence the retention of the quarters from 1.6.2000 at Kalupadaghat without any authority was irregular, even if it is accepted, as per the contents of the letter dated 24.07.2000 that the

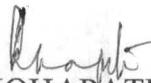
quarters at Rambha was not habitable for his stay and the same was allotted in his favour by the order dated 21.08.2000.

9. In view of the above, the recovery of damage rent for the entire period from **26.10.1999** to **09.09.2000** is held to be unjustified. Accordingly, the order under Annexure-A/11 is hereby quashed to the extent of recovery of damage rent of the quarters from **26.10.99** to the **end of May, 2000**. The Respondents; especially Respondent No.3 i.e. Senior Divisional Personnel Officer, East Coast Railway, Khurda, are/is hereby directed to charge/deduct only the normal rent of the quarters occupied by the Applicant at Kalupadaghat for the period from **26.10.1999** to the **end of May, 2000**. Respondents may charge the rent as per the existing Rules/instructionis for the period from **01.06.2000** to **09.09.2000**, keeping in view the non-availability of the quarters at Rambha till 21.08.2000. Accordingly, the Respondent No. 3 is hereby directed to recalculate the Rent payable by the Applicant to the extent directed above, and return the differential amount (already deducted from the Applicant) to him within a period of **30 (thirty days)** from the date of receipt of this order. It is, however,

made clear that delay in payment of the differential amount to the Applicant (beyond thirty days), he shall be entitled to simple interest at the rate of 9% per annum and the Respondents are free to recover the interest amount to be calculated and paid to the Applicant for such delayed compliance of the order, from the officer(s) responsible.

“An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine.” - Apex Court in **Lakshmi Ram Bhuyan vs Hari Prasad Bhuyan** (2003) 1 SCC 197. This is, nonetheless, one such case wherein a stitch in time would have saved nine, at least to save both from protracted litigations.

10. In the result, this OA stands allowed to the extent stated above. No costs.


(C.R.MOHAPATRA)
MEMBER (ADMN)