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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 61 OF 2007

Cuttack, this the 04th day of December, 2009

Sri Onkardas Ganapatrao Ganvir..... Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(C. R. MOHAPATRA)
ADMN. MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NOs. 61 OF 2007
Cuttack, this the 09th day of December, 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

.....

Sri Onkardas Ganapatrao Ganvir, aged about 57 years, S/o-
Ganapatrao Ganvir, at present working as Commissioner of
Income Tax (Appeals-1), Bhubaneswar, Dist-Khurda.

..... Applicant

By the Advocate(s)..... M/s. J.M. Pattnaik,
S. Mishra, A.P. Mishra, C. Panigrahi

Vs.

1. Union of India represented thorough Secretary (Economic Affairs), Ministry of Finance, North Block, New Delhi-110001.
2. Union of India represented thorough Secretary (Revenue), Ministry of Finance, North Block, New Delhi-110001.
3. The Chairman, Central Board of Direct Taxes, Ministry of Finance, North Block, New Delhi-110001,
4. The Director of Income Tax (Infrastructue), A Wing, Hudco Vishala, 14, Bhikaji Cama Place, New Delhi.
5. The Addl. Director of Income Tax (Infrastructue), A Wing, Hudco Vishala, 14, Bhikaji Cama Place, New Delhi.
6. The Chief Commissioner of Income Tax-1, 373, Ayakar Bhawan, Maharishi Karve Road, Mumbai-400020.
7. The Dy. Commissioner of Income Tax (HQ), Administration, Mumbai.
8. The Joint Commissioner of Income Tax, OSD(HQ), (Administration, Mumbai, O/O-Chief Commissioner of Income Tax, 373, Ayakar Bhawan, Maharishi Karve Road, Mumbai-400020.

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9. The Chief Commissioner of Income Tax, Orissa Region, Ayakar Bhawan, Bhubaneswar, Dist-Khurda.
10. The Asst. Commissioner of Income Tax (HQ) in the Office of Chief Commissioner of Income Tax, Ayakar Bhawan, Orissa, Bhubaneswar, Dist-Khurda.

..... Respondents

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

O R D E R

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

The grievances of the applicant, presently working as Commissioner of Income Tax (Appeals-1), Bhubaneswar, centers round two orders dated 10.01.07 (Annexure-A/19) and 01.02.07 (Annexure-A/20) passed by the Additional Director of Income Tax (Infrastructure), New Delhi and the Joint Commissioner of Income Tax, OSD (HQ) ADMIN, Mumbai respectively.

2. The facts in brief are that while the applicant was working as such under Respondent No.6 at Mumbai was allotted a Govt. Flat bearing No.A-25, Income Tax Colony, Pedder Road, Mumbai from 1997 to 2006. However, the applicant having been transferred from Mumbai to Bhubaneswar, at the present Station, it was required of him to vacate the Government Quarters allotted to him at Mumbai as

per Rules. But as, his son was reading in Bachelor of Engineering in Watumull Institute of Electronics Engineering & Computer Technology, Worli, Mumbai, the applicant represented as per Annexure-A/1 dated 04.08.03 for retention of the said quarters till the annual examination of his younger son was over. As per Annexure-A/2 dated 05.08.05, the applicant was permitted retention of quarters for the period from 18.07.05 to 17.11.05 as per the mode prescribed therein for payment of licence fee. While the matter stood thus, the applicant, again, as per Annexure dated 31.08.05 sought further extension of quarters upto 17.03.06 on the ground that the annual examination of his son was to take place in the month of March/April, 2006. However, as per Annexure-A/4 dated 20.12.05, the applicant was allowed retention of quarters for the period 18.11.05 to 18.03.06 subject to payment of licence fee as stipulated therein. The applicant as it reveals from Annexure-A/5 dated 31.12.05, further represented for retention of quarters upto 31st May, 2006 as the 1st year Examination of his son was scheduled to be held in the month of May, 2006, followed by another representation dated

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07.02.2006 addressed to the Chairperson, CBDT, New Delhi.

The applicant's request having not been acceded to by the

Chairperson, CBDT, New Delhi instead he being directed to

vacate the quarters by 30.04.06; failing which market rent at

Rs.1,07,250/- per month would be levied on him w.e.f.

19.03.06, the communication which he received on 29.04.06,

again represented the Chairperson, CBDT, New Delhi as per

Annexure-A/9 dated 04.05.2006 requesting retention of

quarters upto 30.06.06. Be that as it may, since the request of

the applicant had already been rejected, as per Annexures-A/19

and A/20, he has been levied with penal rent @ Rs.1,07,250/-

per month for the period from 19.03.06 to 27.08.06, amounting

to Rs.5,67,387/- in toto, which are impugned herein. In this

background, the applicant has sought for the following relief:-

- “(a) To admit this Original Application and issue notice for filing of counter within a reasonable time.
- (b) To quash the order vide Annexure-A/19 and A/20 passed by the Respondent No.4 & 6 respectively.
- (c) And pass any other order or orders as this Hon'ble Tribunal fit and proper in the interest of justice.”

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3. This O.A. has been admitted by this Tribunal on 21.02.07 and an interim order issued to the effect that there shall not be any recovery till a final decision is taken in this matter. The said order was further extended by the order dated 16.08.07. In response to the notice, a Counter affidavit has been filed for and on behalf of the Respondents justifying the impugned orders so issued.

4. We heard Mr. Patnaik, J.M. Pattnaik, Ld. Counsel for the applicant and Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel for the Respondents.

5. A rejoinder to the counter has also been filed for and on behalf of the applicant reiterating more or less the stand taken in the O.A. Relying on the various decisions of this Tribunal, it has been submitted that though the applicant had been transferred from Mumbai to Bhubaneswar, yet he was entitled to retain the quarters till the completion of education session of his son who was appearing Exam. for Bachelor of Engineering at Mumbai. It has been further submitted that though the relevant letters of Annexures A/6 and A/8 O.M. and the CBDT letter F. No. DIT(Inf.)/RET-15/POL/2004 dated



21.03.06 clarifying that the rule for retention of accommodation for a period of upto 4 months (beyond 8 months of transfer on the grounds of education of children of the officer) applies only to cases where the children are studying in Class X or Class XII and appearing for attendant entrance tests thereafter and not for education of levels higher than Class XII, yet, it has no application to the case as the same come to the knowledge of the applicant during April, 2006. It has been submitted that as per the principles laid down by the said rule it is the duty of the competent authority to see that the Government employee are allowed retention of Flat or the Government Quarters till the education session of their children is over and it should not be restricted to the children studying in Class X and XII alone. It is submitted that in accordance with the principles laid down by the various Benches of CAT including that of the Principal Bench at New Delhi, the applicant is not liable to payment of penal rent and in effect, the impugned orders should be quashed. In this connection, the applicant has relied on the order passed by the C.A.T. Jabalpur Bench on 30.10.06 in O.A.

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No.222/06 as well as order of the C.A.T., Principal Bench, New Delhi, in O.A. No.770/06 dated 21.05.07.

6. In answering the contentions raised by the Ld. Counsel for the applicant, and relying on the counter reply Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel for the Respondents submitted that since the applicant's request for retention of quarters beyond 8 months was not within the powers of Chief Commissioner of Income Tax, Mumbai, the matter was referred to CBDT, which did not accede to the applicant's request. Since the applicant had already been allowed retention of quarters for a period of 8 months, it was clarified that no further retention on the ground of education could be permitted except the children studying in Class-X or XII and/or attending entrance examination. It is in the background, as per O.M. dated 21.03.2006, the applicant was advised to vacate the quarters immediately. The applicant having vacated the quarters on 28.08.06, the penal rent, as admissible under the Rules, was charged on him for the period from 19.03.06 to 27.08.06. Shri Mohapatra submitted that the allotment of Government accommodation to officers and staff

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of the Income Tax Department is governed by the Department of Revenue and Company Law Allotment Rules, 1964 (Annexure-R/1). As per SR 317-P-25 of the said Allotment Rules, the Government may, for the reasons to be recorded in writing, relax all or any of the provisions of these Rules in the case of any officer or residence or class of officers or class of residences. In the above background, the CBDT has issued guidelines for retention of departmental pool accommodation upon transfer of an officer for one station to another as per Annexure-R/2 dated 13.02.06. Shri Mohapatra further submitted that the applicant having retained quarters beyond the authorized period, the penal rent has rightly been assessed as per FR-45-A (15) for the period of unauthorized retention of Govt. accommodation. Shri Mohapatra further submitted that the decision of CAT, Jabalpur bench and Principal Bench, as relied on by the applicant have been carried to higher forums, and the matter is subjudice. Finally, Ld. Counsel submitted that the impugned orders are justifiable as the applicant did not vacate the quarters beyond the permissible period notwithstanding communication made to him rejecting his

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request for further extension. Shri Mohapatra further submitted that the O.A. being devoid of merit, is liable to be dismissed.

7. We have anxiously considered the submissions made by the parties and perused the records produced before this Tribunal. In the light of the contentions raised, the question to be decided is whether the applicant had unauthorizedly occupied the Govt. accommodation. In other words whether the Respondents are justified in assessing penal rent as per Annexures-A/19 and A/20 and ordering recovery thereof.

8. Before answering the point in issue, it is advantageous to see that the relevant rules, on the subject. The Allotment of Government Accommodation to Officers and Staffs of the Income Tax Department is governed by the Department of Revenue and Company Law Allotment Rules, 1964 (hereinafter referred to as "Allotment Rules". As per Supplementary Rules-S.R. 317-P-25, of the Allotment Rules, the Government may, for the reasons to be recorded in writing, relax all or any of the provisions of these rules in the case of any officer or residence or class of officers or class of

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residences. Keeping in view the above provision, the Central Board of Direct Taxes (CBDT) has issued guidelines for retention of departmental pool accommodation upon transfer of an officer from one station to another vide F. No.DIT(Inf.)/RET-15/POL/2004 dated 13.02.2006. The norms for retention have been so devised keeping in view the hardships involved in shifting the family on transfer of an officer from one station to another. In terms of SR-317-B-12 of the said Rules, the Head of Department i.e. Chief Commissioner of Income Tax or Commissioner of Income Tax, as the case may be, is empowered to allow retention for first two months for which the transferred out officer is required to pay normal rent only. The retention of accommodation can be extended by another six months by the Head of Department in special cases and the officer concerned shall be required to pay double the normal rent for the accommodation, so retained in terms of proviso to SR-317-F-21 of the said Allotment Rules. Further retention of accommodation upto another 4 months, against payment of four times the normal rent, can be approved by the CBDT in cases recommended by the Heads of



Department on grounds of education of children; medical treatment of self/family and in other cases of genuine hardship in terms of guidelines issued in this regard vide F. No.DIT(Inf.)/RST-15/POL/2004 dated 13.02.06. Admittedly, the applicant upon his transfer from Mumbai to Bhubaneswar made Annexures-A/8 and A/10 representations for extension of retention of the quarters at Mumbai on the ground that his son was studying for B.E. 1st year in Watumull Institute of Electronics Engineering & Computer Technology, Worli, Mumbai. Subsequently, as per the Office Memorandum issued by the Department 21.03.06, it is fixed that the retention of Government Quarters for completion of education of children in general can be considered for accommodation provided such children are studying in Class X and/or XII and/or appearing attendance of entrance examination. But this stand taken by the Department, according to the applicant is detrimental as such restriction could not be considered in his case as his application itself was for the purpose of completion of education of his son. The authorities considered his application and allowed retention of quarters in two spells up to 18.03.06, whereafter O.M. dated



21.03.06 came to be issued. However, the applicant wanted further retention of quarters till June, 2006 by which time the examination of his son in B.E. in Watumull Institute of Electronics Engineering & Computer Technology, Worli, Mumbai was to be over. In the above background, the Department construed that the applicant wanted to retain the government quarters beyond the time limit allowed for him i.e., from 19.03.06 to 28.08.06 and the said retention of Government quarters at Mumbai has been considered by the Respondents as unauthorized occupation. Actually, as per rules, concession is given to an employee who is transferred out, for retention of Government quarters till the academic session of his children was over. The stand now taken by the Department is that the applicant ought to have vacated the quarters just on completion of the permissible period as his son was not studying in Class X or XII, but was in the higher classes i.e., B.E. 1st year. In this context, we have gone through the decision of C.A.T., Jabalpur Bench in O.A. No.222 of 2006 (Sri Syamal Kumar Chattopadhyay Vrs. Union of India and Others.) The Jabalpur Bench had considered the issue in



extenso and held that the concession or exemption granted for retention of Government quarters could not be restricted for the purpose of education of the transferee, whose children are studying in Class X or XII alone based on the ground that the Respondents therein had not adduced any justifiable reason for the distinction made between the children studying in Class X/XII and those in higher classes. This view has also been adopted by the C.A.T. Principal Bench, New Delhi in O.A. No. 770/PB/06 (G.R. Sufi, Commissioner of Income Tax (I), Amritsar Vrs. Union of India and Others.) In the light of the principles laid down in the above decisions, we are of the view that the stand taken by the Respondents is not tenable and accordingly, we hold that the period of retention of Government quarters by the applicant against which he has been charged damage rent has to be regularized and in effect, the impugned orders at Annexure-A/19 and A/20 are liable to be quashed and set-aside making the applicant entitled to payment of four times the licence fee as has been assessed while granting 2nd spell extension. Before parting with case,

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we cannot lose sight of the facts averred by the Respondents in para-M of the Counter, which reads as under:

"... It was noticed that the petitioner had admitted in the said representation dated 04.05.2006 that his elder son and daughter are in employment at Mumbai. The case of the petitioner therefore, evidently did not fall in the category of genuine hardship as his other children were already in employment at Mumbai and he was apparently using the pretext of education of his younger son to retain the departmental flat at Mumbai."

With a view to test the genuine^{ness} of this submission, we had made a reference to the representation dated 04.05.06 (Annexure-A/9) filed by the applicant, the relevant portion of which reads as under:-

"... Meantime, I am trying my level best to arrange the alternative accommodation for my family at Mumbai, since, I cannot take them to Bhubaneswar, due to the employment of my elder son and daughter, who are unmarried and staying with me."

The applicant to the above, at pages-9 and 13 of his rejoinder, has replied as under:-

"... The elder son and daughter of the applicant were recently employed temporarily at relevant time after completion of their education, which did not in any way diluted the genuine hardship about accommodation.

... Regarding the employment of elder children of the applicant it is to explain that they

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had recently completed their education at the relevant time and were employed purely temporary. Later on the elder daughter was removed from the said temporary job and is till unemployed. Thus temporary and new employment of the children was in no way helpful to the applicant for searching the alternative accommodation."

We have considered this aspect of the matter deeply.

Admittedly, the applicant in his representation dated 04.05.06

(Annexure-A/9) has stated that "Since I cannot take them to

Bhubaneswar, due to the employment of my elder son and

daughter, who are unmarried and staying with me," while

seeking further extension of retention of quarters, i.e., upto

30.06.06. He has also not made any precise reply in the

rejoinder regarding the period of employment of his son and

daughter. If so, the case in hand cannot be at par with the facts

and circumstances of the case decided by the CAT, Jabalpur

Bench or CAT, Principal Bench (Supra). Besides, the applicant

has not produced any document, i.e., Admit card or Hall permit

to substantiate that the examination that his son was appearing

at Mumbai was over by May, 2006. In the above background,

the application of rules for retention of Govt. Quarters due to

education of the transferred employee would not stand to

reason. In the fitness of things, we issue the following directions:-

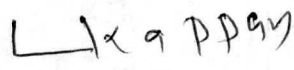
1) The Chief Commissioner, Income Tax, Mumbai (Respondent No.6) shall conduct an enquiry on the veracity of the employment of son and daughter of the applicant at Mumbai and in this respect, the applicant shall furnish the necessary particulars of the Firm or Organization or office where his son and daughter were in employment, including the period for which they had served. Further, the applicant shall also furnish some corroborative evidence or admit card, as the case may be, to show that the examination that his son was appearing at Mumbai was over during May, 2006. On receipt of the above informations, which the applicant shall straightway furnish within a period of 30 days from the date of receipt of this order, Respondent No.6 shall cause an enquiry, as directed above, after affording all reasonable opportunities to the applicant to have his say in the matter, and if Respondent No.6 comes to a conclusion that there existed a case of education for the applicant, notwithstanding the higher or lower the impugned orders at



Annexure A/19 and A/20 shall be treated as null and void and only four times the normal licence fee shall be recovered from the applicant. In case the conclusion is otherwise, the Respondent No.6 shall pass appropriate orders within a period of fifteen days of conclusion of the inquiry, until which time the interim stay on recovery shall continue. It is, however, made clear that until a decision as directed above is taken by Respondent No.6, no action shall be taken on Annexures-A/19 and A/20.

9. With the above observations & directions, this O.A. is disposed of. No costs.


(C. R. MOHAPATRA)
ADMN. MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER