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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 830 OF 2010
CUTTACK, THIS THE ~~01st~~^{02nd} DAY OF September, 2011


Brundaban Chandra Pani..... Applicant

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

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


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

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CORAM :

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

Sri Brundaban Chandra Pani, aged about 69 years, Son of
....., At- Gandakul, P.O.- Ahiyas, Dist- Jajpur.
.....Applicant

Advocate(s) for the Applicant- M/s K.P.Mishra, S. Mohapatra,
T.P.Tripathy

VERSUS

1. Union of India represented through the Chief Post Master General, Orissa, Bhubaneswar.
2. Senior Superintendent, RMS "N" Division, Cuttack-753001.
3. Post Master, Jajpur Head Office, Jajpur, At/PO/Dsit- Jajpur.

..... Respondents
Advocates for the Respondents – Mr. U.B.Mohapatra.

ORDER

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

This O.A. has been filed by the applicant U/s 19 of the
Administrative Tribunals Act, 1985 seeking the following relief:

"(i) quash the impugned order dated 23.07.2010 under Anenxure-A/5 which is issued during pendency of the Appeal by concurrently holding the same as bad, illegal and cannot be sustainable or maintainable in the eye of law".

2. The undisputed facts of the case are that the applicant was working as S.A. (B.C.R.) in Cuttack under the Sr. Superintendent, R.M.S. "N" Division, Cuttack. He retired on superannuation from the Govt. Service on 28.02.2002. He had been allotted with Govt. accommodation, i.e. Type-III Qr.No.11/2B, Block-C at SSPO's compound, Cuttack. He was allowed by the department to occupy the quarter upto 31.10.2002 but he continued to remain in occupation of the said quarter without any proper sanction and vacated the same on 14.05.2003. So, he has been charged with a damage rent w.e.f. 01.11.2002 to 14.05.2003. In addition to the damage rent, electricity charges outstanding against the applicant were also proposed to be recovered at the instance of CESCO. For this, he was served with an order for recovery of the amount from his retiral benefits. Vide Annexure-A/5, the office of the Director of Accounts (Postal) Cuttack addressed a letter to the Post master, Jajpur, Head Office, directing to recover an amount of Rs. 24,393.05/- (Rs. 42,097.05-Rs. 17,704/-) from the DR (Deamess Relief) of the applicant. The applicant being aggrieved with the above order has filed this O.A. with the prayer as referred to above.

3. The contention of the applicant is that he is not liable to pay damage rent at the rate which is applicable to the Govt. accommodation in Delhi as the accommodation at Cuttack cannot

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be equated with that of Delhi and the rate should be, therefore, different and much less. The further contention of the applicant is that the electricity charges, i.e. Rs. 19,207.05/-, for the said quarters which was vacated by him on 14.05.2003 is not payable by him, as according to him, all charges on account of electricity consumption were cleared by him.

4. While admitting this O.A., notices were issued and the operation of Annexure-A/5 was stayed as an ad interim measure. Since then, this interim order is continuing.

5. Respondents have opposed the prayer of the applicant in their counter on the following grounds:

The department charged damage rent for the unauthorized occupation of quarter from 01.11.2002 to 14.05.2003 as the applicant did not respond to clear up all dues by submitting N.O.C. from the electricity office till 15.01.2008. Accordingly, the Director of Accounts ordered Post master, Jajpur Head Office to recover the outstanding amount from the DR of the pension of the applicant.

As regards the damage rent, Respondents have clarified in their counter that the rate which is charged at Rs. 75/- per square meter is much less than the rent at Delhi, which is Rs. 150/- as would reveal

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from Annexure-VI to the counter. They have given the detailed calculation at page 3 of the counter as under:

"Again the Plinth Area of the quarter is 47.30 Sqr Mtr and Living Area is 37.54 Sqr Mtr. Initially the damage rent was calculated @ 75/- per Sqr Mtr on the plinth area to a sum of Rs. 22,890/- which was further revised to Rs. 18,168/- calculating it on the living area of 37.54 Sqr meter on direction of the Circle Office as follows:-

Damage rent per month = Rs. 75.00 x 37.54 = Rs. 2815.50 rounded to Rs. 2816.00

Damage rent from 01.11.2002 to 30.04.2003 = Rs. 2816.00 x 6 = Rs. 16,896.00

Damage rent from 01.05.2003 to 14.05.2003 = Rs. 2816.00 x 14/31 = Rs. 1271.71 rounded to rs. 1272.00

Total damage rent = Rs. 16,896.00 + Rs. 1272.00 = Rs. 18,168/-".

6. Heard the Ld. Counsel for the applicant and the Sr. Standing Counsel for the Respondents and perused the materials available on the record.

7. It is observed that since the applicant was in unauthorized occupation of the quarter, the damage rent has been calculated at the rate which is applicable to such type of cases outside Delhi and in consonance with the instruction issued by the DG, P&T. Hence, the Respondents cannot be faulted for realizing damage rent at the prescribed rate which is uniformly applicable to all such employees. As far as arrears of electricity charges are concerned, it is noticed from Annexure-V to the counter that the

applicant has been charged Rs. 19,207.05 for the period 02.06.1997 to 14.05.2003 and the first such demand has been sent by the Assistant Manager (Commerce), City Distribution System No.1, CESU on 27.10.2006 in a letter addressed to the Sr. Superintendent, RMS "N" Division. The point to be noted here is that no reason is forthcoming as to why the arrears were allowed to pile up for six years and could not be sorted out during the service period of the applicant. Though, as per the existing instruction/pension rules, the No Due Certificate has to be produced before the pension papers are processed, it is not forthcoming as to how the electricity charges in respect of the quarter, which was being collected by the CESCO, has been treated as Govt. dues.

8. The Respondents have not produced any document to show that the department had given any undertaking to the Grid Corporation of Orissa Ltd./CESCO before the electricity connection was given in the said quarter in respect of the applicant. It appears that the electricity bills have been paid by the occupant directly to the said distribution system. Hence, if any due is outstanding then the action should be taken for realizing the same through appropriate means as per law. Further, the Respondents have no authority to make any cut from the pension except on the basis of disciplinary proceedings, which is not the case here. Hence, the order under Annexure-A/5 cannot be sustained in the


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eyes of law. Department is at liberty to realize the damage rent for the period the applicant was in unauthorized occupation of the quarter and the amount on this score has to be calculated based on the prescribed rate, which appears to have been done as stated in the counter. But the applicant is not liable to pay any amount from the DR of Pension towards the outstanding electricity consumption charges, the amount in respect of which there is a dispute and which needs to be sorted out between the CESCO and the applicant. Accordingly, the order vide Annexure-A/5 in this regard is unwarranted.

9. In view of the above discussions and observations, Annexure-A/5 is quashed. Respondents are, however, free to recover only the damage rent at the prescribed rate for the period the applicant was in unauthorized occupation of the quarter.

10. The O.A. stands allowed to the extent stated above.

No costs.


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

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