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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.490 OF 2011
Cuttack this the 08th of January, 2014.

Raj Kishore Mallick...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi or not ? ✓


(A.K.PATNAIK)
MEMBER(J)

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CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

Raj Kishore Mallick, aged about 43 years, Son of late Panchanan Mallick at present working as Sub Postmaster, Sajanagarh Sub Post Office under the Balasore Postal Division, Balasore – permanent resident of Kalidaspur, Post-haripur, Via-Motiganj, Dist-Balasore

...Applicant

By Advocate:Mr.T.Rath

-VERSUS-

Union of India represented through

1. The CPMG Orissa Circle, At/PO-Bhubaneswar, Dist-Khurda
2. Director of Postal Services (Headquarters) in the office of C.P.M.G., Orissa Circle, Bhubaneswar, At/PO-Bhubaneswar GPO, Dist-Khurda
3. Superintendent of Post Offices, Balasore Postal Division, At/Post/Dist-Balasore

...Respondents

By the Advocate:Mr.S.Barik

ORDER

A.K.PATNAIK, MEMBER(J):

Aggrieved with the communications dated 1.9.2008, 25.9.2008 and 27.2.2009 vide Annexures-A/8, A/10 and A/13 respectively, by virtue of which, the prayer of the applicant for dequarterization of the post quarters has been rejected and simultaneously, he has been asked to occupy the post quarters, the applicant has moved this Tribunal in the present Original Application seeking the following relief.

- i) Direct the respondents to grant HRA at the admissible rate to the applicant from 1.4.2008 till date.
- ii) Quash the order under Annexure-A/8, A/10 and A/13 and declare the unusual realization of the lion's share of the rent

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from the salary of the applicant chargeable towards the office-cum-residential building as bad and illegal.

- iii) Direct the Respondents to refund the amount deducted from the salary of the applicant towards electricity charges for the period during which he had not occupied the post quarter
or in the alternative
- i) Direct the Respondents to recalculate and reassess the rent which have been paid for hiring the premises for the office minus the residential portion meant for the SPM. Further, direct the Respondents to pay the said amount to the applicant with interest as admissible under law.

2. The sequence of events, as revealed from the O.A.is that applicant belongs to the cadre of Postal Assistant carrying the scale of Rs.5200-20200. In the first instance, he was directed to officiate against the post of Sub Post Master, Sajanagarh Sub Post Office on deputation basis with effect from 5.1.2008. While working as such, he was permanently transferred against the said post with effect from 1.4.2008. According to applicant, Sajanagarh S.O. is a double handed delivery Sub Office, which is functioning in a Private rented building. While on deputation, applicant was being paid Rs.608/- per month towards HRA from 5.1.2008 till March, 2008 regularly. Consequent upon his permanent transfer, he was not paid the HRA on the presumption that rent free accommodation is being provided to him. Since the applicant found that the license free attached quarters is not having sufficient space, besides being uninhabitable on account of various reasons, he kept his family at Saganagarh and at the same time brought this fact to the notice of the Superintendent of Post Offices, Balasore Division vide his representation dated 10.5.2008 (Annexure-A/1). According to applicant, the building used for the office as well as rent free accommodation of Sub Post Master in toto measures to 914.38 Sq.Ft. which is let out for Rs.1600/- per month whereas his current salary in the scale of Rs.5200-20200/- being



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Rs.13,620/- per month, he is entitled to HRA @ Rs.10% + LA @ Rs.140/- per month which works out to Rs.1547/-. On this score, it is the submission of the applicant that almost the entire rent of the office including the residential portion is being realized and paid from his salary. It has been submitted by the applicant that the total floor area of the building includes and consists of veranda, public counter space, passage and premises upto boundary, besides only three rooms. According to applicant, the entire building consists of two main rooms. Whereas the entrance space was marked as SPM bed room, the inner room was used for office. Apart from the above, a small room available was marked as store room for the SPM's office and that there was no separate meter for the residential accommodation of SPM. Since the applicant did not feel inclined to move to post quarters, he made a representation dated 10.5.2008 to the Superintendent of Post Office vide Annexure-A/1 expressing his concern over the state of affairs. On receipt of the said representation, the Superintendent of Post Offices, Balasore Division directed the Inspector of Post Offices, Nilagiri to conduct an enquiry and submit a report in this regard. According to applicant, the Inspector of Post Offices having conducted the inquiry submitted its report affirming the points raised by him. However, without taking any action for dequarterization of the post building, Res.No.3 issued order dated 28.7.2008 directing the applicant to use the room meant for office room as Store Room for the Post Office and to use the Store Room as SPM's bed room. It was further indicated therein that there existed a separate way to the South direction and as such, there would be no problem for the SPM to reside in the quarters independently. However, dequarterization of the building was not acceded to and on the other hand, the applicant was threatened of dire consequence in the event of

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disobedience of the order. In response to this, the applicant again agitated his grievance before the Respondent No.3, which having been turned down in an irrational and arbitrary manner, he sought permission of Respondent No.3 to move to the post quarters subject to entrustment of risk to his life as well as the lives of his family members on the Government vide his representation dated 10.9.2008. Respondent No.3 without understanding and appreciating the practical difficulty, insisted on the applicant to occupy the quarters vide communication dated 25.9.2008. While the matter stood thus, without any rhyme or reason, a sum of Rs.140/- per month was deducted from his salary towards electricity charges notwithstanding the fact that the applicant was not in occupation of the post quarters. Questioning the legality of the above deduction, the applicant made a communication dated 20.10.2008 to Respondent No.3 not to effect any recovery from his salary, which did not yield any fruitful result. Aggrieved with this, the applicant preferred an appeal dated 4.12.2008 to the Director of Postal Services (Res.No.2). According to applicant, it was due to misrepresentation of facts while forwarding the appeal, the same was rejected by Respondent No.2. Thereafter, the applicant sought information under R.T.I.Act regarding the details of post quarters, which was received by him vide communication dated 14.9.2009 and simultaneously, has moved this Tribunal in the instant O.A. seeking relief as referred to above.

3. It is the case of the applicant that the present rented building used for office and meant for the rent-free accommodation of the Sub Post Master in toto comprises of 914.38 Sq.Ft. having the present house rent of Rs.1600 per month whereas the applicant's current salary being Rs.13,620/- per month, the entitlement of the applicant towards HRA @ 10% plus LA @ 140 per month works out to Rs.1547/-, and therefore, almost the entire rent of the

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office building including the so called residential portion is being realized and paid from his salary.

4. Applicant's GP being Rs.2400/-, as per the Govt. of India notification dated 20.5.2009, he is entitled to Type-II quarters.

5. It is the further case of the applicant that the DG Posts Circular No.7-1.2000 Building dated 8.4.2010 also not only provides the power to the Heads of Circle of dequarterisation of the post quarters in the event of it becoming uninhabitable but also the Ministry of Finance OM dated 14.3.2008 provides for payment of house rent in the event of non-availability of rent free accommodation to the eligible officials.

6. On receipt of the representation, the Superintendent of Post Offices directed the IPO, Rajnilagiri for making an inquiry and to submit his report about suitability or otherwise of the post quarters of SPM, who in turn having made an enquiry submitted his report confirming the claim of the applicant. But without taking any action for dequarterization of the post, building, the Res.No.3 issued order dated 28.7.2008 directing inter alia to use the APMs Master Bed room in the sketch map as office room for the post office and to use the room used as office room as store room for the post office.

7. There is no separate meter for the SPM's quarter and there being one lavatory meant for the office and SPM's quarters, his privacy is likely to be affected in the event of occupation of rent free accommodation. Above all, it is the case of the applicant that the space to be used by the applicant as per his entitlement is less than what is being provided as rent free accommodation and therefore, the Respondents should not have compelled him to move to the said rent free accommodation.



8. Per contra, the Respondents by filing their counter have submitted that as per departmental rules, SPM is not entitled for HRA and LA where SPM's quarters is available. Accordingly, the HRA and LA were not paid to the applicant. It has been submitted that on receipt of information from the applicant about the position of the rooms in the SPM's, quarters was enquired and it was intimated to the SPM to inter change the rooms according to his suitability and accordingly. The Respondents have submitted that Govt. of India in the Ministry of Communications and I.T. Department of Posts Notification dated 20.05.2009 circulated vide DG letter dated 26.5.2009 is not applicable to this case in view of the fact that the applicant joined as SPM, Sajanagarh SO with effect from 01.04.2008 and the above said ruling was issued on 26.5.2009. The post quarter of SPM Sajanagarh is attached to Sajanagarh Sub Post office and is habitable with general accommodations and with proper facilities of electricity and water. As such DG Circular dated 8.4.2010 and the Ministry of Finance OM dated 14.03.2008 are not applicable to this case.

9. As per enquiry report of the IPO Rajnilagiri Sub Division the existing arrangement of the rooms of Sajanagarh Sub Post Office rented building have been inter changed to the make the quarters more suitable for habitation. Still the applicant did not occupy the post quarters by taking a false plea. Always he emphasized on the point to make the SPM's quarter dequarterised so that he could get HRA and LA. But the same is not at all lawful where the quarters is suitable and habitable as proved by his predecessors. Moreover, re-arrangements of rooms had also been made to make the quarters more suitable. But the applicant made many more correspondences to the office of SPOs Balasore Division, Res.No.3 to



dequarterise the Sajanagarh PO building due to his abstinent, rigidity and disobedient nature.

10. According to Respondents, when the building was taken on rent the area of the building was taken into consideration before finalization of monthly rent to the building. At that time the area was considered suitable in respect of standard of accommodation for Type-II quarters envisaged in Departmental Volume II which is 1083 sq.ft. whereas the area of the building taken is 917 square feet as it is the possible nearest area which is the best available in Sajnagarh locality. The electricity charges of the attached SPM's quarters is to be deducted from the salary of the SPM. As such the electricity charges of the quarter portion has also been deducted from the salary of the applicant. But the applicant is rigid not to occupy the SPMs quarters by hook or crook and want to get the HRA and LA.

11. I have heard Shri T.Rath, the learned counsel for the applicant and Shri S.Barik, learned Addl.Central Govt. Standing Counsel. I have also gone through the rejoinder as well as affidavit filed by the applicant and Respondents respectively and perused the pleadings of the parties. From pleadings of the parties the following points emerge for consideration.

- i) Whether the rent free accommodation provided to the applicant is commensurate with his entitlement or according to standard laid down in this regard.
- ii) Whether the Right to life and personal liberty as enshrined under Article 21 of the Constitution are infringed by the Respondents by forcing the applicant to move to rent free accommodation.
- iii) Whether the Respondents are justified in deducting HRA and electricity charges from the salary of the applicant.
- iv) If so what relief could be granted to the applicant ?

12. Undoubtedly, provision for post attached rent free accommodation is a condition of service to the Postmasters/SPMs. In this connection **DG Post**

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No.24/4/87/PRP/NB(P) dated 11.2.1988 accentuates that whenever accommodation is rented for the post offices having rent free post attached quarter for the PM/SPM care should be taken to ensure that the size of such quarters as far as possible conforms to the standards laid down in this regard. It is an admitted fact that the applicant's Grade Pay being Rs.2400/-, he is entitled to Type-II Govt. accommodation. It is also an admitted position in the counter as well as in the affidavit filed by the Respondents that Type-II quarters envisaged in Departmental Volume II which is 1083 sq.ft. whereas the area of the building taken is 917 square feet as it is the possible nearest area which is the best available in Sajnagarh locality. It is thus clear and self evident from the above stand point of the Respondents that the size of the rent free accommodation as provided to the applicant being SPM does not conform to the standard as laid down in this regard. Therefore, the point in issue (i) as indicated above, is answered to the extent that the rent free accommodation provided to the applicant is not commensurate with his entitlement or according to standard laid down in this regard and therefore, he should not be compelled to an accommodation below his entitlement.

13. The next point for consideration is whether the Right to life and personal liberty as enshrined under Article 21 of the Constitution are infringed by the Respondents by forcing the applicant to move to rent free accommodation. In this connection it would be worth-mentioning and is the admitted position that there is only lavatory in the SPM office to be used by the staff as well as the family members of the SPM. This sort of arrangement, in my considered view, should have been better understood and appreciated by the Respondents as it gives an impetus on the personal liberty of an individual, i.e., the applicant herein and his family members

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thereby affecting their privacy. Therefore, the point in issue No. (ii) is answered in favour of the applicant and against the Respondents and accordingly, it is held that forcing the applicant to move to rent free accommodation has an implication of infringement of the provisions of Right to Life and Personal Liberty as enshrined under Article-21 of the Constitution, which right cannot be taken away by the Respondent without following the due procedure of law.

14. So far as deduction of HRA is concerned, indisputably, the applicant was not in occupation of the rent free accommodation. It is also an admitted position that the rent fixed for SPM office as well as rent free accommodation is such which is a better part of the HRA deducted from the salary of the applicant. In other words, whereas an amount of Rs.1322/- per month is deducted towards HRA from the salary of the applicant the rent paid to the land lord for the SPM office as well as rent free accommodation is Rs.1600/-. This being the circumstances, why the applicant shall not enjoy the benefit or facility equal to the value that he compensates towards HRA or why he should be deprived of to avail the proportionate value of charge ? This position ought to have been considered by the Respondents with due application of mind and not in a flimsy manner.

15. Similarly, as regards the assessment of electricity dues, it is an admitted fact that there is only one meter to assess the consumption of electricity both for office as well as the rent free accommodation. This practice is highly unreasonable, because, by this process, apportionment of electricity dues on the applicant as well as the SPM office cannot be determined to the value equal to the electricity consumed and therefore, the applicant, had he been in occupation of the rent free accommodation, could



have a right to compensate only that part of electricity dues which he has consumed and not by the SPM office. This apart, as indicated above, applicant was not at all in occupation of the rent free accommodation. Therefore, the Respondents ought not to have deducted any electricity dues from his salary towards. This action of the Respondents, in my considered view, is stretching of powers. Therefore, the point in issue No.(iii) is answered in favour of the applicant and accordingly, it is held that the Respondents were not justified in deducting HRA and electricity charges from the salary of the applicant unilaterally.

16. Having answered all the three points in issue as above in favour of the applicant, it is axiomatic that the applicant is entitled to relief what he has sought in the Original Application. Accordingly, I make the following orders.

- i) The impugned Annexure-A/8, A/10 and A/13 dated 1.9.2008, 25.9.2008 and 27.2.2009 are quashed and set aside.
- ii) Respondents are directed to grant HRA to the applicant as due and admissible from 1.4.2008 and also refund the amount deducted from his salary towards electricity charges for the period during which he was not in occupation of the post quarters.

The above exercise shall be completed within a period of three months from the date of receipt of this order.

In the result, the O.A. is allowed. No costs.

(A.K.PATNAIK)
MEMBER(J)