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OA No. 554 of 2011  
PKMohapatra-Vrs-NALCO

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.554 of 2011  
Cuttack, this the 19<sup>th</sup> day of August, 2014


Prasanna Kumar Mohapatra .... Applicant

-Versus-

Union of India & Others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓

  
(A.K.PATNAIK)  
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

Original Application No. 554 of 2011  
Cuttack, this the 19<sup>th</sup> day of August, 2014

CORAM  
THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL)

.....

Prasanna Kumar Mohapatra, aged about 62 years, Ex-Manager (Coordn.) Utkal, E-Coal Project Angul, Son of Late Ganesh Mohapatra, VIM-171, Sailashree Vihar, Chandrasekharapur, Bhubaneswar-21, Dist. Khurda.

...Applicant

(Advocates: M/s.R.K.Sahoo, S.Patra-1)

VERSUS

1. National Aluminum Company Limited represented by its Chairman Cum Managing Director, NALCO Bhawan, P1, Nayapalli, Bhubaneswar-751061, Dist. Khurda.
2. Director, Personnel and Administration, NALCO BHAWAN, P1, Nayapalli, Bhubaneswar-751061, Dist. Khurda.
3. Executive Director, HRD and Administration, NALCO BHAWAN, P1, Nayapalli, Bhubaneswar-751061, Dist. Khurda.
4. Executive Director, NALCO, At-Mines and Refinery Complex, Damanjodi-763008, Dist. Koraput.
5. Manager (Coordn.), NALCO, At-Mines and Refinery Complex, Damanjodi, Dist. Koraput.
6. Executive Director, NALCO Smelter and Power Complex, NALCO, Nagar, Angul, Po/Dist. Angul.

... Respondents

(Advocate: Mr.R.C.Swain)

*Swain*

**ORDER****A.K.PATNAIK, MEMBER (JUDL.):**

The case of the applicant in short is that he was appointed and posted at NALCO Damanjodi on 26.2.1983 and continued there till 4<sup>th</sup> July, 2005. He was allotted NALCO Qr. No. C-17/III at Damanjodi. On 05.07.2005, he was transferred to NALCO CPP Division, Angul. He retained the quarters at Damanjodi on the ground of education of his son till 31.10.2008; for which he was charged penal rent for 31 months i.e. from 01.04.2006 to 31.10.2008. He represented for refund of the penal rent deducted from his salary on the ground that when for retention of quarters in similar situation no penal rent was recovered from several employees, recovery of penal rent from him is unjust, illegal and arbitrary. Hence, by filing the instant OA he has prayed to quash the letter dated 06.05.2011 and the guidelines dated 19.05.2008 and to direct the Respondents to refund the penal rent amounting to Rs.1, 27,435/- already recovered from his salary with usual interest within a stipulated period to be fixed by this Tribunal.



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2. The letter dated 06.05.2011 and the guidelines dated 19.05.2008 which are sought to be quashed by the applicant read as under:

**Letter dated 06.05.2011 –**

“Please refer to your representation dated 18.9.2010 on the above noted subject. Your above representation has been examined and dealt as per the instant rules/guidelines of the Company.

As per the guidelines received from Corporate Office, refund of penal rent to the maximum of 75% has been suggested as a onetime measure subject to vacating the quarter occupied unauthorizedly. The above guideline has been approved by the competent authority on 29.05.2008. As the quarter was retained unauthorizedly upto 31.10.2008, much later than the date of approval date i.e. 29.5.2008, your request for refund of penal rent does not come under the purview of the above guidelines approved by CMD. Further as per the guideline approved on 29.05.2008, the entire future cases shall be dealt as per the provisions of House Allotment Rules.”

**Guidelines dated 19.05.2008 –**

“It has been indicated by GM (H&A) & S&P to approve a principle based on which penal rent deduction/relaxation for individual cases will be considered at unit level. Accordingly, we may consider the following principle as a onetime measure:

01. There are some cases, where an employee is eligible for higher accommodation but while shifting have occupied both the quarters (present one and allotted one) due to delay caused by civil/electrical maintenance. There are also some cases those who are eligible for higher accommodation but occupied quarters un- authorizedly due to delay in allotment

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without subletting. On all such cases based on the duration of such unauthorized occupation, penal rent may be refunded on proportionate basis subject to maximum upto 75% of the total amount deducted.

02. There will be no relaxation on penal rent in case of clear-cut forcible unauthorized occupation and/or have sublet the quarters as a source of income;
03. The above consideration will be a onetime measure subject to vacating the quarters occupied unauthorisedly;
04. All future unauthorized occupation cases will be penalized as per the provision of House Allotment Rules."

3. Respondents/NALCO by filing counter, resist the claim of the Applicant and to the above extent, it has been stated that during his incumbency as Manager (Coordination) in NALCO M&R Complex Damanjodi from 26.02.1983 to 04.07.2005 he was in occupation of the Quarters No. C/17 Section III at Damanjodi which was allotted to him vide order dated 25.11.1998. He was relieved from the said post on 04.07.2005 so as to join at his new place of posting i.e. at Captive Power Plant Angul. As per the clause 15.02 (B) of NALCO House Allotment Rules, on transfer an employee is entitled to retain the quarters in his previous place of posting for a period of two months on payment of standard rent.



In the instant case, the Applicant was permitted to retain the quarters in question at Damanjodi upto 31.03.2006 on payment of standard rent. He submitted representation dated 12.12.2006 requesting to retain the quarters at Damanjodi on the ground of education of his son till May, 2008 which request was turned down by the competent authority and retention of quarters from 01.04.2006 was treated as unauthorized. Accordingly in terms of clause 15.02 (B) of NALCO House Allotment Rules, penal rent to the tune of Rs.1, 27, 435/- @ Rs.4,395/- per month was deducted from his salary. Further it has been stated that the applicant submitted representation dated 10.10.2009 requesting refund of penal rent citing the cases of refund to around 128 employees on similar grounds which was placed before the competent authority who advised M&R Complex to take decision as per approved policy. Accordingly, the representation of the applicant was considered by the M&R complex keeping in mind the principle formulated by the CMD on 29.5.2008 in which it was decided that the consideration shall be a onetime measure subject to vacating the quarters occupied unauthorizedly whereas in the instant case, the applicant was in occupation of the said quarters by the date



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such approval was accorded. The applicant vacated the quarters only on 31.10.2008. As his case does not come within the purview of the principles decided by the CMD or within the 128 cases cited by him, his representation was rejected. On the above reasons, the Respondents have prayed that this OA being devoid of any merit is liable to be dismissed.

4. Despite receipt of counter and adequate opportunity being granted, no rejoinder has been filed by the Applicant.

5. Mr. R.K.Sahoo, Learned Counsel for the Applicant and Mr.R.C.Swain, Learned Additional Standing Counsel appearing for the NALCO have emphasized their stand taken in the respective pleadings and having heard them at length, I have perused the records. Clause 15.03 of NALCO House Allotment Rules postulates that where after an allotment has been cancelled but the residence remains or has remained in occupation of an employee to whom it was allotted, such employee shall be liable to pay penal rent for use and occupation of the residence as imposed by the company from time to time. As a onetime measure, the competent authority granted concession on 29.05.2008 to the effect that penal rent may be refunded on proportionate basis subject to



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maximum upto 75% of the total amount deducted with specific stipulation that (i) the consideration will be a onetime measure subject 'to vacating the quarters' occupied unauthorisedly and (ii) all future 'unauthorized' occupation cases will be penalized as per the provision of House Allotment Rules. Admittedly, no quarters were allotted to the applicant at Angul after his transfer from Damanjodi and the applicant vacated the quarters on 31.10.2008. The Respondents/NALCO denied the benefit of the order dated 29.5.2008 on the pretext that the applicant vacated the quarters much after the order i.e. on 31.10.2008 and since the order specifically provides that all future unauthorized occupation cases will be penalized as per the Rules, he was not entitled to the refund as claimed by him. Obviously for the above reason the applicant in this OA has prayed to quash the order dated 29.5.2008. If this order is quashed then as per the provision made in clause 15.03 of NALCO House Allotment Rules deduction of penal rent cannot be faulted with especially when the proviso of clause 15.03 of the Rules has not been challenged in this OA. Secondly in case the said order is quashed then the persons who have received the benefits though will be affected has not been made as a party-

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respondent in this OA. Therefore, I am not inclined to quash the order dated 19/29/05.2008 but at the same time I find that the denial of the benefit of the order dated 19/29.05.2008 on the ground that as the applicant vacated the quarters on 31.10.2008 is not correct. The order clearly states that consideration will be a onetime measure subject 'to vacating the quarters' occupied unauthorisedly and (ii) all future 'unauthorized' occupation cases. All future unauthorized occupation cases means where unauthorized occupation has been declared on and from 19/29.05.2008 as the case may be which is not the instant case and subject 'to vacating the quarters' means, such concession will be given to employees who are in occupation of quarters unauthorizedly and vacates the same. In worst the Respondents can retain the penal rent already recovered from 19/29.05.2008 till 31.10.2008 but for the period from 09.04.2006 till the date of the order he is entitled to the refund of the penal rent already recovered on proportionate basis subject to maximum upto 75% of the total amount deducted. Accordingly, I quash the letter of rejection dated 06.05.2011 and direct the Respondents to do the needful as per the observation made above and refund the amount to which he will be




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entitled to within a period of 90 (ninety) days from the date of receipt of copy of this order. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.

  
(A.K.Patnaik)  
Member (Judicial)