

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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Date of order: 3.9.2010

PRESENT:

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

In the Matter of

O.A. No.351/2010

Rabinarayan Routray ... Applicant

Versus

Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

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For Applicant: M/s.S.B.Panda,M.R.Sahoo, Counsel

For Respondents: Mr.U.B.Mohapatra, SSC

O R D E R

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

Applicant is at present working as Engineer II Lic in the office of the Chief Engineer, Air Wing, Aviation Research Centre (ARC), Charbatia, Cuttack and is residing in Qr.No.4R (Type IV Spl.)/16. In this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 he seeks to quash the order under Annexure-16 and the circular under Annexure-17. The circular under Annexure-17 was issued by the ARC Headquarters, New Delhi making it applicable to all the employees of the ARC. It reads as under:

“It has come to the notice of this Hqrs that officers/officials are occupying Govt. quarters below to their entitled category. Such cases may please be regulated in terms of SR 317-b-10(2) which stipulate as under:-

QUOTE if an officer is occupying a lower type residence is allotted or offered a residence of the type for which he is eligible under SR 317-B-5 or for which he has applied under SR 317-B 7 (iii), he may, on refusal of the said allotment or offer of allotment, be permitted to continue in the previously allotted residence on the following conditions namely –

(a) That such an officer shall not be eligible for another allotment for the remaining period of the allotment year in which has declined the allotment or offer;

(b) While retaining the existing residence, he shall be charged with the same licence fee which he would have had to pay under FR 45-A in respect of the residence so allotted or offered or the licence fee payable in respect of the residence already in his occupation, whichever is higher
UNQUOTE

This instruction may kindly be brought to the notice of all officers for strict compliance."

As the applicant did not occupy the 5R quarters allotted to him within the prescribed time period and continued to stay in his previous allotted 4R quarters, it was directed by the competent authority under Annexure-A/16 to recover the licence fee in respect of 5R quarters which was allotted to the applicant but he did not take possession of the said quarters and continued to stay in his 4R allotted quarters. Being aggrieved by such order/circular under Annexure-16 & 17 the applicant has approached this Tribunal with the aforesaid prayers. The applicant challenges the aforesaid order under Annexure-16 & 17 on the following grounds:

- (i) The circular under Annexure-17 is contrary to the Rule under Annexure-18;
- (ii) No opportunity was granted prior to passing the order under Annexure-16;
- (iii) The order under Annexure-16 is the out come of *mala fide* and colourable exercise of power;
- (iv) No consideration given to the representation filed by him;
- (v) The authority cannot compel to an employee to take higher accommodation with the plea of loss of Government Revenue when such expenses was an imprudent investment on the part of the authority for the time being for the benefit of the employees;
- (vi) Injustice/miscarriage of justice caused in decision making process of the matter for assessing the entitlement of the quarters;
- (vii) He is at present in the grade of pay of Rs.8700/- It is not a fact that as per his grade pay he is entitled to 5R quarters merely because it is lying vacant since long

because officers were not entitled to the said quarters earlier;

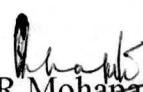
- (viii) According to his grade pay, as per the rules framed by the Directorate of Estate he is only entitled to 4R quarters. As such compelling him to take 5R qrs and deduction of licence fee in spite of non-occupation of the said quarters is illegal;
- (ix) 4R/16 is equivalent to Type-V (D-1) and 5R quarters are equivalent to Type VI quarters. Applicant is not entitled to 5R quarters. The authority cannot compel an employee to take higher accommodation merely because the quarter is lying vacant. Hence deduction of licence fee for Type 5R qrs is illegal;
- (x) Brazen attempts have been made by the Respondents by misquoting the rules which are not at all applicable to the applicant to mislead this Tribunal. This act of the Respondents to hoodwink this Tribunal with *mala fide* intention.

2. No counter has been filed by the Respondents despite adequate opportunity granted to them. However, an objection to the prayer for interim relief has been filed by the Respondents in which it has been stated that there was nothing wrong in the deduction of the licence fee for the 5R quarters from the applicant because as per the Grade Pay of the Applicant he is entitled to 5R quarters which are lying vacant since long as officers were not entitled earlier. It was the responsibility of the applicant to apply for entitled quarters after coming in Pay Band-4 with Grade Pay of Rs.8700/- which the applicant did not do. Accordingly, he was asked to apply for 5R qrs. vide letter under Annexure-R/1 which clearly mentioned that Government is loosing revenue on account of non-occupation of entitled quarters by the officers who have been staying/residing in below type quarters. After that the agency responsible for maintenance of quarters i.e. CPWD was given direction to renovate 5R quarters properly since these were lying vacant for last many years and after completion of renovation the applicant was asked again vide letter dated 8.4.2010 and 20..2010 to take over 5R quarters. But the applicant did not

apply for the above quarters and continued to stay in below type i.e. 4R quarters. As such, there was no option left by the Administration except to take action in terms of Directorate of Estate Rule SR -317-B-10(2) which provides that 'if an Officer occupying a lower type residence is allotted or offered a residence of the type for which he is eligible under SR-317-B-5 for which he has applied under SR-317-B-7(iii) he may on refusal of the said allotment or offer of allotment, be permitted to continue in the previously allotted residence on the conditions that such an officer shall not be eligible for another allotment for the remaining period of the allotment year in which he has declined the allotment or officer while retaining the existing residence, he shall be charged with the same licence fee which he would have had to pay under FR 45-A in respect of the residence so allotted or offered or the licence fee payable in respect of the residence already in his occupation whichever is higher. For the aforesaid reason, the Respondents vehemently opposed the contentions raised in this OA and have prayed for dismissal of this OA.

3. Heard Learned Counsel for both sides and perused the materials placed on record. The sole question that needs decision is whether according to the Grade Pay the applicant is entitled to 5R or 4R in which he is at present residing. Applicant is in the grade pay of Rs.8700/- and according to the said Rules he is entitled to V-B (D-1) quarters. According to the Applicant 4R which the applicant is presently in occupation is having the plinth area of 125.10 sqm and is equivalent to type V (D-1) category and 5R is equivalent to Type VI quarters to which he is not entitled to. I may record that as per Law no employee can be compelled to occupy the Government accommodation unless the said quarters is a post attached one nor the employer has got any absolute right to stop the HRA for non-occupation of the Government quarters. Similarly quarters can be allotted to an employee according to his

entitled class. One cannot be compelled to take quarters one type below or higher unless specifically asked for in writing by the employee concerned. Loss and profit cannot be a ground to compel an employee to take higher class accommodation if he is not entitled or has applied for the same. Similarly, no such absolute power has been given under the Rules that even if an employee is occupying lower accommodation higher licence fee can be deducted from him in the event he refused to take up the higher accommodation lying vacant. Quarters are not for earning profit by the Department. It is being constructed as a benevolent measure to protect the interest of the employees. Be that as it may, since it is the positive case of the Applicant that 4R is equivalent to Type V (D-1) to which he is entitled to having grade pay of Rs.8700 to 8,900/- in terms of rule under Annexure-A/18 which has not been disputed by the Respondents and that the order under Annexure-16 has been issued without affording any opportunity and Annexure-17^{issued} as it appears without taking into consideration the amended rule under Annexure-18, both the orders under Annexure-A/16 & 17 are hereby quashed. Meanwhile if any excess amount over and above the licence fee of 4R quarters towards licence fee has been recovered from the applicant the same may be refunded to him forthwith. In the result this OA stands allowed to the extent stated above. No costs.


(C.R.Mohapatra)
Member(Admn.)