

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 516 of 2014
Cuttack, this the 11th day of **SEPTEMBER**, 2015

Nilamani Sahoo Applicant
Versus
Union of India & Ors. 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 (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION 516 of 2014
Cuttack, this the 11th day of SEPTEMBER, 2015

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

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Nilamani Sahoo aged about 60 years, S/o Late Bhikari Sahoo At/PO Baideswar, Via Kalapathara, District Cuttack.

.....**Applicant**
(Advocate : M/s. D.P. Dhalsamant, N.M.Rout)

VERSUS

1. Union of India represented through its Director General, Department of Posts, Ministry of Communication, Government of India, Dak Bhawan, Sansad Marg, New Delhi – 110 001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, District Khurda – 751 001.
3. Director Postal Services (HQ), O/O Chief Post Master General, Odisha Circle, Bhubaneswar, District- Khurda, 751 001.
4. Senior Superintendent of Post Offices, Cuttack City Division, At/PO/District Cuttack – 753 001.

.....**Respondents**

(Advocate : Mr. S.Behera)

.....
O R D E R

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

The applicant alleging inaction of the Respondents in giving consideration to his prayer for de-quarterisation of quarter and consequently refusing payment of House Rent Allowance for the period



from 17th August, 2009 to 22nd August, 2012 to him, has approached this Tribunal in this present O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

“(8.1) That the order dated 09.05.2014 (Annexure A/9) be quashed.

(8.2) That respondents be directed to pay House Rent Allowance to the applicant for the period from 17.08.2009 to 22.08.2009 within a stipulated period with 12% interest.

(8.3) And further be pleased to pass any order.....”

2. The case of the applicant, in short, is that he was a BCR official under Respondent No. 4 and has already retired on 31st March, 2014. Before his superannuation, on 3rd June, 2009, he was transferred from Chauliaganja Non-Delivery S.O. to Nayabazar S.O. as S.P.M. by Respondent No.4 and, accordingly, a post quarter was allotted to him. Before his joining, the applicant visited the said post office and made a representation on 13.07.2009 to Senior Superintendent of Post Offices, i.e. Respondent No.4, (vide Annexure-A/1) for permission to reside outside in a rented house as the post quarter was not habitable because there was no kitchen and bathroom and the only toilet was in a dilapidated condition. After his joining to the said post of SPM, Nayabazar S.O. on 17.08.2009, he again submitted a representation on 20.08.2009 to Respondent No.4 (Annexure-A/2) intimating that he has



not occupied the post quarter and, accordingly, prayed for grant of House Rent Allowance in lieu of rent free accommodation. Respondent No.3, i.e. Director Postal Services (HQ) visited the Nayabazar S.O. and given a remark on 27.08.2009 that de-quarterisation of the post office can be considered on surrender of the post attached quarter and proportionate reduction in the rent of the Post Office. On account of non-payment of House Rent Allowance, the applicant submitted representation on 20th September, 2010 and on 7th May, 2012 to the Respondent No. 3. The Senior Superintendent of Post Offices, Cuttack City Division, Cuttack, vide letter dated 29.08.2012 intimated that in pursuance of the CO approval conveyed in File No. Bldg/8-322/75 dated 23.08.2012, the Nayabazar Post Office building is hereby dequaterized with immediate effect. Accordingly, the applicant was granted HRA from 23.08.2012, i.e. from the date of approval of dequarterization. The applicant after making representations on 20.12.2012, 25.02.2013 and 3.3.2014 before Respondent No.3 for payment of House Rent Allowance for the period from 17th August, 2009 to 22nd August, 2012 retired from service on attaining the age of superannuation w.e.f. 31.03.2014. Thereafter, the applicant has been intimated by the Respondent No.4 vide letter dated 09.05.2014 that his "representation dated 03.03.2014 on the subject is considered and rejected by the competent authority". On receipt of letter dated 9th May, 2014, rejecting the House Rent

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Allowance from 17.08.2009 to 22.08.2012, the applicant approached this Tribunal in the present O.A., praying to quash the order under Annex. A/9 and to direct the respondent- department to pay him House Rent Allowance for the period from 17.08.2009 to 22.08.2012 with 12% interest.

3. The main contention put forth by the Respondents in their counter filed in this case is that in terms of the extant instructions/rules, as S.P.M., applicant is required to remain in the post attached quarters of the Nayabazar S.O. It is contended that as per the provisions of Rule 37 of Postal Manual Vol. VI, Part – I, "free quarters are allowed to Postmasters and such other establishment as it may be necessary for the proper discharge of the work of a Post Office to have residence on the premises and where such free quarters are provided, he is required to sleep on the office premises." It is further stated that as per the provisions of Rule 4 of the HRA & CCA Rules, those occupying or refusing Government accommodations, are not eligible for House Rent Allowance. Apart from these Rules, steps were taken to provide separate entrance for quarter to make the same more suitable and the owner of the building was requested to make necessary additions/alterations as pointed-out by the applicant, but neither it can be materialised nor other suitable accommodation was available in the nearby locality for shifting the Post Office. Ultimately, de-quarterisation of Nayabazar Post Office



building was approved by the Chief Post Master General, Odisha Circle vide their letter dated 23.08.2012 with immediate effect. Accordingly, the applicant was granted HRA w.e.f. 23.08.2012. However, as regards the entitlement of House Rent Allowance for the intervening period, i.e. 17.08.2009 to 22.08.2012, no order was passed by the competent authority.

4. Heard the reiteration of the averments made in the respective pleadings of the parties and perused the material placed on record. The fact remains that based on various representations and the report submitted to the competent authority, the competent authority vide letter dated 23.08.2012 de-quarterised the Nayabazar PO Building which had no facility to live in by the applicant.

5. It appears that the Senior Superintendent of Post Office, Cuttack City Division, Cuttack vide its letter dated 25th September, 2009 (Annex. A/4) fortified the facts pointed-out by the applicant that the quarter portion meant for S.P.M., is not at all suitable and SPM's are not residing there since long due to non-availability of kitchen and bathroom and the toilet is in damaged condition.

6. Denial of HRA in lieu of the quarters not occupied by the incumbent for the reason as in the present case had come up for consideration before this Tribunal in O.A. No. 463 of 2008 (Paramananda Nanda v Union of India & Ors.). After considering all



aspects of the matter, the Tribunal vide order dated 21.10.2009 held as under:

“4. It reveals from record that in compliance of the order communicated in Memo dated 28.1.2005 of the Respondent No.4, Respondent No.5 verified the quarters and submitted the report in letter dated 01.7.2005 vide Annexure-A/7 stating as under:

“As per RO Letter under reference, I visited Balangir RS NDTSO on 16.02.2005 to inspect the condition of the PO building and SPM's quarter. I found that the said building is having only corridor, two medium size rooms, two small rooms, one courtyard and one latrine bath room. The corridor is being utilized as public space and the PO is functioning in one room and the other room is being utilized as Form/Store room of the post office. Leaving aside this portion two small rooms, one courtyard on the backside and one latrine/bathroom are available. The size of these rooms are 6'X8' and 5'X6'. This portion cannot be utilized as quarter for the SPM.

As regards the occupation of the post quarter of Balangir RS SO by the previous SPMs it is to intimate that the corridor of the PO building which is now being utilized as public space was being utilized as the PO room by the previous SPMs and a temporary Asbestos structure existing in front of the PO meant for keeping the cycles, motor cycles etc. By the public was being utilized as the public counter by the previous SPMs. In fact there is no privacy of the said portion. No door has been provided to it and hence everything of the office was visible to the members of the public. Hence, after joining of Shri Nanda the said corridor portion is being utilized as a public space from the security point of view. In fact it is a type II quarter and the same type of quarter has also been allotted to the Railway employees and they are exclusively utilizing the entire portion for residential purpose but in our case one room is utilized as office



room and another room is utilized as store cum record room resulting in inadequate accommodation for the SPM quarter.”

5. As it appears, the above stand has again been reiterated in the report submitted by Respondent No.5 under Annexure-A/10 dated 08.11.2005 and Annexure-A/12 dated 20.02.2006 while meeting the queries made by Respondent No.4. From the above, it is clear that the quarters in question were not according to the entitlement of the applicant. None can be insisted to do something beyond the rules. Similarly, none can be compelled upon to stay in a quarter which is not in accordance with his entitlement. Government is under obligation to provide quarters to its employees and in case of non-availability of quarters according to the entitlement of an employee the employee concerned is entitled to HRA. On going through the report submitted by the Respondent No.4 in my opinion there remains nothing further to hold that in not occupying the quarters in question the applicant had violated the relevant rules. In the circumstances, it is nothing but fair to hold that non-payment of the HRA and CA in lieu of the quarters cannot be justified. That the predecessors of the applicant were occupying the quarters cannot be a ground to insist on the applicant to reside in the quarters which was admittedly inadequate, in other words unsuitable for the applicant to stay. However, I refrain from quashing the order under Annexure-A/14 and A/16 in rejecting the prayer of applicant for dequarterisation of the Post quarters; as quashing of the orders would tantamount to depriving the successor of applicant who might have been interested to take the quarters even with such deficiency.

6. In view of the discussions made above, as the applicant did not occupy the quarters in question for the period he was holding the post, the Respondents are hereby directed to grant the applicant HRA and on fulfilling the condition CA for the period from 26.05.2004 to 25.05.2005 within a period of 60 days from the date of receipt of this order.”

[Signature]

7. After going through the entire facts and the material available on record and the earlier decision of this Tribunal in the case of Paramananda (supra), I am of the considered view that the applicant is entitled to House Rent Allowance for the period from 17th August, 2009 to 22nd August, 2012. Hence, the Respondents are hereby directed to calculate and pay House Rent Allowance from 17.08.2009 to 22.08.2012 to the applicant within a period of 30 (thirty) days from the date of receipt of a copy of this order.

8. The O.A. stands allowed to the extent stated above. No costs.


(A.K. Patnaik)
Member (Judicial)

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