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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos. 785, 786 and 828 OF 2014
Cuttack this the 5th day of April, 2016

CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Budhiram Naik aged about 57 years S/o Late Shri Jatindranath Naik of Vill/PO Kadualbandh, P.S. Badasahi, Distt. Mayurbhanj, at present working as Sr. Audit Officer, Office of the Principal Accountant General (E&RSA), AG Square, Bhubaneswar, Odisha, District Khurda.

...Applicant of OA No. 785/2014

Sirish Chandra Naik aged about 57 years, S/o Late Shri Jhadeswar Naik of Vill. Siramanipur, PO Rugudi, PS Jashipur, District Mayurbhanj, at present working as Sr. Audit Officer, Office of the Principal Accountant General (E&RSA), AG Square, Bhubaneswar, Odisha, District Khurda.

...Applicant of OA No. 786/2014

Jatadhari Jena, aged about 57 years, S/o late Baidyanath Jena of Vill. Bhuluka, PO-Krustnapursasan, PS- Balichandrapur, District- Jajpur, at present working as Sr. Audit Officer, office of the Principal Director of the Audit (Central), Hyderabad, Branch Office Odisha, Bhubaneswar, Dist. Khurda.

...Applicant of OA No. 828/2014

By the Advocate(s)- Mr. S.K.Ojha

VERSUS

- 1- Union of India represented through the Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi - 110124.
- 2- Accountant General (G&SSA), AG Square, Bhubaneswar, Dist. Khurda, Odisha, PIN-751001.
- 3- Dy. Accountant General-cum-Estate Officer, Office of the Accountant General (G&SSA), AG Square, Bhubaneswar, Dist. Khurda, PIN-751001.

.....Respondents in all the OAs

By the Advocate(s)- Mr. J.K.Nayak & M.R.Mohanty

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ORDER

R.C.MISRA, MEMBER(A):

The three OAs as mentioned above have similar facts, and same issues for adjudication. Therefore, these OA's are disposed of by a common order.



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2. Since the facts are similar, those pertaining to O.A.No. 785/2014 are discussed below, which will serve the purpose, since these facts are mutatis mutandis similar to the facts in the other two OA's.
3. The OA No. 785/2014 is filed by the applicant serving in the office of the Principal Accountant General, Odisha, at present posted as a Sr. Audit Officer. He has approached the Tribunal with a prayer for quashing of respondents' order dated 15.04.2014 (Annex.A/10) by which applicant has been asked to pay outstanding dues towards HLF and WC for unauthorized occupation of Government quarters in the New A.G.Colony, Bhubaneswar, and passing any other orders as deemed fit and proper.
4. The facts of the case as briefly stated are that the applicant while working as Auditor in the office of Pr. A.G. at Bhubaneswar was allotted a Type-III quarters by the respondents. Applicant vide office order dated 24.5.2012 was transferred and posted under the control of Sr.D.A.G. (ES-II) at Puri, and accordingly he joined there on 08.06.2012. He made an application to respondents to allow him to retain his quarters at Bhubaneswar, on account of family and personal reasons. In response to such application, he was intimated to give his willingness to move into a Type-II quarters in AG's pool at Bhubaneswar, so that his case could be considered. Applicant gave such a willingness. He had not accepted the official quarters at Puri, and he was not paying any house rent allowance. He had a reasonable expectation that his request for retention of official quarters at Bhubaneswar would be favourably considered, particularly when he had given his willingness to move into a Type-II quarters. The respondents did not communicate any decision to him in this regard, and he continued to stay in his quarters at Bhubaneswar. In the meantime, he was ^eagainst transferred to Bhubaneswar, and he has joined on 06.01.2014. He was also allotted Type-IV

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 quarters on 26.02.2014, on the basis of his application and entitlement. He thereafter received an office order dated 15.04.2014 in which he was asked to deposit a sum of Rs.1,98,826/- towards damage rent for retaining the quarters at Bhubaneswar for the period from 05.06.2012 to 26.02.2014. This office order was issued without any opportunity being afforded to him to state his case. The respondents did not take recourse to proceedings under Public Premises Eviction Act, before passing such an order. There was no order of cancellation in respect of the quarters which were allotted in the year 2005. Applicant had made a representation against the order on 01.09.2014 to respondent No. 2, which having not been disposed of, he has now approached the Tribunal seeking relief to quash the office order dated 15.04.2014, by which damage rent has been imposed. The applicant has termed this order illegal, arbitrary, and violative of the principle of natural justice, ^{while} ~~which~~ making his prayer to this Tribunal.

5. In the counter affidavit filed by the respondents while admitting the facts of the case, they have pleaded that from the date of relinquishment of charges, i.e. 05.06.2012, on his transfer to Puri, the applicant has lost his right to occupy the quarters allotted to him at Bhubaneswar. The applicant did not take the quarters at Puri, but on the other hand, sought permission for retaining his quarters at Bhubaneswar on payment of standard license fee at normal rate. But respondents could not take a decision on the representation of the applicant because there was an ambiguity with regard to how long the applicant would be asked to serve at Puri. The Rules for Allotment of Government Residential Accommodation and Departmental Guest Houses in IA&AD, 2006 stipulate that a residence allotted to an employee may be retained for two months after his transfer to another station. Allotment shall be considered as cancelled thereafter. The Estate Officer in a special case is empowered under Rule-19 to allow

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 occupation of residential quarter for a period of not exceeding six months beyond the normal period, on payment of damage rent. The Rules 9 (2), 19 and 21 of the Allotment Rules have been thus quoted by the respondents who further state that the rate of damages have been revised w.e.f. 01.01.2013 to 41 times of the normal rate of standard license fee. The applicant's representation dated 13.07.2012 was deceptively linked to his transfer back to old station, which was open-ended, ambiguous and indefinite. That is the reason advanced by respondents for not taking any decision on the request of applicant to retain his quarters at Bhubaneswar.

6. On the other hand, O.O.C. No. 760 dated 04.10.2012 was issued to all such unauthorized occupants including the applicant to vacate their quarters within the prescribed period, failing which proceedings under Public Premises Act would be initiated. Since the applicant did not vacate the quarters, his representation dated 13.07.2012 was referred to office of C&AG on 14.02.2013 because C&AG is empowered under Rule 21 of Allotment Rules to relax any of the provisions under the Rules. The applicant, however had a duty to vacate the quarters at the old station in deference to the Rules. He also could not cite a precedent in which an employee has been given such a privilege of retaining quarters at old station for an indefinite period. It is admitted by respondents that the applicant was asked to give his willingness to move to a Type-II quarters, and applicant gave such willingness. However, the respondents failed to communicate any decision on this, ^{and} ~~any~~ eventually, the applicant got transferred back to Bhubaneswar where he assumed charge on 27.02.2014. Therefore, the respondents have treated the period from 05.06.2012 to 26.02.2014 as unauthorized occupation by the applicant, since no permission in specific terms was accorded to the applicant to retain his occupation of the quarters in the old station during the period. The

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applicant being a senior employee, no steps for eviction from the quarters were taken, but allotment of quarters was deemed to have been cancelled from the date of his relinquishment of charge on transfer to Puri. The respondents have finally submitted that the representation of the applicant should be deemed as rejected, and the applicant is bound under law to deposit damage rent as assessed by Estate Officer as per the Guidelines of the Directorate of Estates, Ministry of Urban Development. The total amount as finalized after re-check is a sum of Rs. 1,86,766/-.

7. In the rejoinder, the applicant makes an important comment that respondents are not free to take any action even though it is not permissible under the law. The Public Premises Eviction Act in Sections 5 and 7 empowers the Estate Officer to take action for directing eviction and realization of damage or penal rent. There is no other way the same can be enforced by the respondents. The applicant's representation in this case did not receive consideration. No communication was made to the applicant asking him to vacate the quarters at Bhubaneswar and move to Puri along with family. There is no deeming provision in the Allotment Rules under which two months after a transfer order the allotment order of quarters would be deemed to be cancelled. The Rules only indicate the rate at which rent would be charged, beyond the permissible period. The power to realize penal or damage rent is vested in the Estate Officer who functions under quasi-judicial capacity, and administrative authority can not exercise this power as a routine function. Even the calculation of damage rent is alleged to be wrong here, since damage rent for the year 2012 has been done as per the circular which came into effect on 04.06.2013. The impugned order is not the outcome of any proceeding initiated under Public Premises Act, and is not sustainable under the law. This is the submission of the applicant in his rejoinder.

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8. The applicant has filed an additional affidavit on 01.02.2016 in which he has submitted that it is the normal practice of Administration to allow employees to retain quarters in the previous place and that is going on from time to time. In this regard, applicant has filed letter No. 28.08.2009 and 27.06.2012. The letter dated 28.08.2009 issued by DAG(Adm)-cum-Estate Officer mentions that "retention/allotment have been allowed on payment of normal license fees subject to condition that the accommodation will be utilized for bona fide use of the families and these quarters will be vacated as and when required by the Estate Officer within one month's notice". There is an office note dated 27.06.2012 in which some officials of DAG Office at Puri have been allowed to retain the old quarters on payment of normal license fee, on transfer to another place. However, this has been allowed on the ground that accommodation at the new place of posting was not available.

9. Having heard at length learned counsels for both sides, I have perused the records. Written notes have been filed by both sides, which I have gone through.

10. The learned counsel for applicant in his written notes, has re-emphasized that the impugned order though communicated through Estate Cell is merely an administrative order, and not an order passed as per the provisions of Public Premises Act, and therefore it is not sustainable in law. Further, the transfer to Puri was made in public interest and respondents did not ask the applicant to move along with family. The applicant was justified in continuing in his quarters at Bhubaneswar by keeping his family. The applicant was asked to give his willingness to move to a Type-II quarter, and applicant gave his willingness. No decision was however taken by respondent-authorities. Even while calculating the penal rent, a circular issued in the later part of 2013 was relied upon and given effect to from 01.01.2013.



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11. The learned counsel for respondents in his written notes, however, submits that this is a matter that falls within the ambit of Public Premises (Eviction of Unauthorized Occupant) Act, 1971, and is not amenable to the jurisdiction of the Tribunal, and therefore not maintainable. Under Section 7 of the Public Premises Act, the power to direct payment of damage rent for the public premises vests with the Estate Officer, and appeal there from lies to District Judge under Section 9 of the Act. The impugned order was issued under the direction of the Estate Officer claiming damage rent, and falls within the compass of the Public Premises Act, and by that reason, the jurisdiction of the Tribunal was ousted. Vide OOC 760 dated 04.10.2012, a communication was sent to applicant permitting him to occupy the quarters till 04.08.2012. It was also mentioned that in case of failure to vacate the quarters, eviction process as admissible under Public Premises Act will be initiated against him. In this regard, respondents have cited the decision of the Bombay High Court in the case of *Union of India Vs. R.K. Pathania* to buttress their argument that Tribunal lacks jurisdiction over the matter. The respondents have further cited the case of *S. Bandoit Vs. Divisional Traffic Officer* decided on 05.07.2013 in which Hon'ble Apex Court has expressed concern about unauthorized occupation of residential accommodations by some which infringes upon the rights of others. The main plank of argument relied upon by the respondents is that this is a matter wholly covered by Public Premises Act and the Tribunal is devoid of jurisdiction to adjudicate the matter.

12. In view of the arguments placed by learned counsels from both sides, it is of utmost importance to first decide whether the matter is falling within the competence of the Tribunal to adjudicate. It is decided by the Apex Court in the case of *Union of India Vs. Rasika Ram* decided on 06.09.2000 [(2001(4) Supreme 505.1)] that order passed by the competent authority under the Public Premises

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 Act would not come under the purview of the Administrative Tribunal. Therefore, this position is finally decided by the Apex Court. The question, however, that arises here is whether there is an order passed by the Competent Authority under Public Premises Act in this case, that is challenged by the applicant. There is no document available to show that any such proceeding was initiated, or any final order was passed by the authority under Public Premises Act.

13. The respondents claim that the order dated 04.10.2012 (Annex.R/5) was issued to the applicant asking him to vacate the allotted quarters on or before the expiry of the permissible period failing which eviction process as admissible under Public Premises Act, 1971 would be initiated against ^{him} ~~them~~ without any further correspondence. But after issue of this letter no actual proceeding was initiated, no order of eviction was issued, nor any penal rent charged by the Estate Officer, under the provisions of Public Premises Act. The impugned order dated 15.04.2014 was signed by Audit Officer / Estate Cell no doubt, but there is no reference to any proceeding under Public Premises Act in this letter. It is only mentioned that applicant's prayer for retention of quarters was not acceded to and he has been asked to pay outstanding penal rent for the period of unauthorized occupation. Considering the facts as stated above, I am of the view that the impugned order has not been passed under the Public Premises Act, and therefore the O.A.^e is maintainable before the Tribunal.

14. Coming to the judgment of the Apex Court in *S.D.Bandi Vs. Divisional Traffic Officer, KSRTC & Sons*, it is seen that the Apex Court has expressed concern about growing trend of unauthorized occupation and issued directions about proceedings under the Public Premises Act, as well as strict enforcement of measures for eviction, while observing the principle of natural justice. But there

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is no such observation that without following the provisions of Public Premises Act or at the cost of principle of natural justice, eviction should be effected.

15. There are yet other factual aspects of the matter requiring consideration. The applicant's representation for retention of quarters at Bhubaneswar was not replied to by respondents. The applicant was asked to give his willingness to move to Type II quarters, which he gave. But, thereafter, no decision was conveyed. Respondents submit that a reference was made to C&AG who has the power of granting relaxation, but no decision in the matter was received. Admittedly, no specific order of eviction was ever issued to the applicant. In fact, no legal proceeding under the provisions of the Act was initiated. The matter was kept under consideration for a long time, and the respondents were very much aware that during this period, the applicant was in occupation of quarters. Applicant did not occupy quarters in Puri, and was not being paid house rent allowance. Till his transfer back to Bhubaneswar he was occupying these quarters, and in fact, he was allotted Type-IV quarters based upon his representation and entitlement.

16. All this goes to show that respondent authorities have failed administratively to sort-out the matter, and they have also failed to initiate appropriate proceedings under the relevant provisions of Public Premises Act. By issue of an administrative order, the damage rent as calculated by the Estate Cell cannot be claimed or demanded from the applicant. The basic principle of natural justice was not observed by asking applicant to show cause in this regard. Clearly therefore, such an order cannot be defended under the law. The State is the model employer. While the employer have²⁸ every authority to enforce discipline among the employees, it also has a duty to ensure that all their actions are

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supported by law, and the prescribed procedures. No arbitrary treatment should be meted-out, and no order causing prejudice or financial hardship should be issued without observing the principle of natural justice and without following the procedure as prescribed under the law. In the present case, after evaluating the matter from all aspects, I am of the opinion that the impugned order imposing damage rent is not sustainable under law, and should be quashed.

17. In view of the discussions aforementioned, orders dated 15.04.2014 in OA No. 785/2014 and OA No. 786/2014, and order dated 10.09.2014 in OA No. 828/2014 which are ²the impugned in these OAs are quashed and set aside.

18. In the result, all the three OAs are thus allowed with no order as to costs.

R.C. Misra
(R.C.MISRA)
MEMBER(A)

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