

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. . . . 23 . . . of 1998.

DATE OF DECISION .. 8-11-2000.

Shri Baikuntha Ram Kalita

PETITIONER(S)

S/Shri B.K.Sharma & S. Sarma.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C.

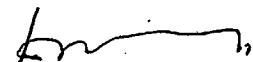
ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 23 of 1998.

Date of Order : This the 8th Day of November, 2000.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

Shri Baikuntha Ram Kalita,
Lineman in the office of the
Sub-Divisional Engineer, Cable,
South, Ambari, Guwahati. . . . Applicant

By Advocate S/Shri B.K.Sharma,
S.Sarma.

- Versus -

1. The Union of India
represented by the Secretary to the
Govt. of India, Ministry of
Telecommunication, New Delhi.
2. The Chief General Manager,
Telecom, Assam Circle,
Guwahati-7.
3. The Telecom District Manager,
Ulubari, Guwahati-7.
4. The Sub-Divisional Engineer, C-II,
Ambari, Guwahati. . . . Respondents.

By Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C)

In this application the order dated 27.8.96 for recovery of damage charge issued by the respondents is assailed under Section 19 of the Administrative Tribunals Act 1985.

2. The applicant is a Lineman working in the office of the Sub-Divisional Engineer, Cable, South, Ambari, Guwahati. He was allotted a seat in Type-II Quarter at CTO compound, Guwahati in the lineman mess alongwith others. The applicant was required to pay the standard rent of Rs. 81/- and the same was deducted from his HRA of Rs.250/- p.m. admissible at that time. Subsequently the rent was increased to Rs.112/-. By notice dated 25.4.96, the Telecom District Manager apprised the applicant that on an enquiry

it was found that family members of the applicant were unauthorisedly occupying the accommodation meant for the Lineman Mess and accordingly he was directed to shift his family members from the said Mess within 10 days and latest by 6.5.96, failing which damage charge would be recovered from his pay. Subsequently by order dated 27.8.96 damage charge @ Rs.450/-p.m was ordered to be recovered from the salary of the applicant of September 1996 with effect from May '96. The applicant on receipt of the above notice submitted a representation before the authority. The applicant in his representation dated 4.10.96 stated that his family was never in occupation of the mess. Sometimes his wife came to P&T Dispensary for her treatment from the village and on rare occasion had a stop over for a day or two with prior permission of other boarders. By that representation the applicant also stated that as he was not staying with his family members in the mess the deduction of damage charge was not justified. Thereafter the applicant preferred an appeal before the Chief General Manager, Assam Telecom Circle on 15.1.97 and a further representation dated 12.3.97 addressed to the Telecom District Manager, Kamrup but failed to get any response. Hence this application under Section 19 of the Administrative Tribunals Act 1985. The applicant also stated that he was not paid HRA from the month of September 1996.

3. In the written statement the respondents have stated that a seat was allotted to the applicant in the Lineman Mess at his own request and standard rent was deducted from his salary for occupation of the mess. The HRA was admissible to the applicant for hiring of accommodation of his family members. On receipt of specific complaint from the other

allottees of the mess the action was taken. On surprise check also it was revealed that the applicant was staying with his family members and he was utilising the Government accommodation for the purpose other than the one for which it was allotted. The applicant was called upon on 25.4.96 to shift his family members within 10 days failing which damage charge would be recovered from him. Since the applicant did not carry out the direction, the respondents imposed damage charge from the applicant and the said decision was communicated to him by order dated 27.8.96. The respondents also stated that non payment of H.R.A was not a recovery since the applicant had been occupying the departmental mess he was not entitled to H.R.A. On the other hand the applicant in his application at para 4.6 specifically stated that on receipt of the communication dated 25.4.96 immediately he shifted his family members to his native place and the same was informed to the respondents also. The applicant also stated that in pursuance of his representation dated 12.3.97, the TDM by his letter No.G-4/C-II/96-97/53 dated 22.3.97 directed the 4th respondent, Sub-Divisional Engineer, Guwahati to make an enquiry relating to the matter. The 4th respondent has also submitted a favourable report to the TDM by his letter dated 27.5.97. He has not been handed over any copy of the said letter and therefore he sought for production of the same by the respondents before the Tribunal. The aforementioned assertion of the applicant regarding the above report in favour of the applicant was neither disputed by the respondents nor denied by them in its written statement. The question of H.R.A. is no longer a subject matter of dispute in this application. The respondents in its last order dated 25.10.2000 has

stated that "the HRA payment which was withheld with effect from September '96 is allowed to be released and the seat rent as per extent rule of the mess should be realised from the official." So the only question now requiring adjudication is relating to the imposition of damage charge. According to the applicant, on receipt of the notice dated 25.4.96 he never allowed the members of his family to use the mess. The aforementioned statement of the applicant remains unrebuted. The power as eluded earlier for imposition of damage charge is not disputed but what is disputed the manner in which the aforementioned amount is sought to be recovered from the applicant. All throughout the applicant is disputing that after May 1996 the applicant himself was occupying the seat and the family members were not allowed to stay in. The statement thus remains ^{un}rebuted. It is trite to recount that under the rules of pleading that every allegation of fact in the application or plaint if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the Respondent/Defendant, shall be taken to be admitted except as against a person under disability. The enquiry report mentioned by the applicant that by the SDO concerned wrote in his favour is also not produced nor the existence was ever disputed. From the materials on record it is difficult to come to a conclusion that the applicant was occupying the mess with his family after May 1996. The respondents also could not by any materials on record justify the said conclusion. Under the circumstances the imposition of damage charge by the order dated 27.8.96 cannot be accepted. The order dated 27.8.96 is accordingly set aside and the recovery so far

made by the respondents is not sustainable. The question of giving any further direction for payment of further H.R.A does not arise in view of the order communicated vide No. GM/Court-Case/0A-23/98/11 dated 25.10.2000.

The application is allowed to the extent indicated.
No order as to costs.


(D.N.CHOWDHURY)
VICE CHAIRMAN