

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 260/0076 OF 2014
Cuttack, this the 21st day of June, 2018

CORAM
HON'BLE MR. S.K.PATTNAIK, MEMBER (J)
HON'BLE DR. M.SARANGI, MEMBER (A)

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Sreekant Kar
aged about 58 years,
S/o Late Suryamani Kar,
At present working as
Sr. Superintendent of Post Offices,
Puri Division, Puri-752001.

...Applicant

(By the Advocate-M/s. A.K.Mohanty, D.K.Mohanty)

-VERSUS-

Union of India Represented through

1. Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist; Khurda- 751001.
3. Sr. Superintendent of Post Offices, Bhubaneswar Division, AT; Forest Par, Post; Ashok Nagar, Bhubaneswar, Dist; Khurda-751009.

...Respondents

(By the Advocate- Mr. L.Jena)

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O R D E R

S. K. PATTNAIK, MEMBER (J):

In a second round litigation, the applicant challenges the speaking order dated 10.01.2014 (Annexure-A/11) passed in response to the order dated 27.02.2013 in O.A No. 89/2013. Applicant also challenges the order dated 30.11.2012 (Annexure-A/6) wherein Senior

Superintendent of Post Office, Bhubaneswar Division, Bhubaneswar has directed for recovery of HRA paid from 28.03.2011 from the pay of the applicant from December, 2012 in 20 equal installments.

2. Applicant's case in short runs as follows:

Applicant on being transferred joined the Post of Sr. Post Master, Bhubaneswar G.P.O w.e.f. 15.12.2010. Post attached quarters meant for him being not habitable, he intimated the same to Respondent NO.3 on 20.12.2010 for immediate repairing. Consequently, the same was dequartered w.e.f 15.12.2010 vide order dated 18.02.2011 (Annexure-A/1) and, subsequently, vide order dated 20.12.2010 funds were sanctioned for repair and renovation work. On a report from Asst. Engineer(Civil) regarding completion of renovation/repairing work of the Post attached quarter, the Respondent No.3 on 04.09.2012 asked the applicant for a report on completion of repairing work and regarding taking over occupation of the said post quarter. Applicant in his application dated 10.09.2012 while intimating that the Civil wing authorities neither intimated him about completion of renovation and repairing work nor took the completion certificate from him as he was the user of the building, and further intimated that the quarters was still not habitable as water was leaking from the roof and rain water was pouring through the broken transparency sheet fixed on the courtyard, besides some additional space was needed for keeping the Official records and, therefore, requested for certain immediate repairing work to be undertaken. The grievance of the applicant is that without considering

the facts mentioned in his letter dated 10.09.2012, Respondent No.3 without application of mind passed an order dated 11.10.2012 (Annexure-A/5) treating the date of occupation of the post attached quarters by the applicant as 28.03.2011, i.e. the date of intimation by the Asst. Engineer (Civil) to him regarding completion of repairing/renovation work and further directed vided order dated 30.11.2012 (Annexure-A/6) to recover the House Rent Allowance drawn by the applicant from 28.03.2011 on wards from his pay from December, 2012. The representation submitted by the applicant was rejected by Respondent No.2 vide order dated 07.02.2013. The submission of the applicant is that although he never stayed in the post attached quarter but being compelled under threat and coercion of the Respondents, he had to give occupancy certificate from 28.01.2013, on which date the records kept in one of the rooms of the post attached quarters were removed. Applicant challenged the order of recovery before this Tribunal in O.A. No. 89/2013, which was disposed of on 27.02.2013 with direction to consider his representation dated 08.02.2013. Respondent No. 2 considered and rejected the same vide order dated 10.01.2014 justifying the recovery of HRA paid to the applicant from 28.03.2011. However, this Tribunal vide order dated 19.02.2014 while issuing notice to the Respondents stayed the order of recovery.

Further stand taken by the applicant is that subsequent to his relieve from the post of Sr. Post Master, BBSR, the next incumbent, who joined the said post, on 24.10.2013 also reported regarding inhabitable

condition of the said post attached quarters and leakage from the roof.

On 04.11.2013(Annexure-A/13) Respondent NO.3 wrote a letter to Respondent No.2 proposing for dequarterization of the post attached quarter till completion of repairing work. On the strength of Annexure-A/13, the applicant submitted that the quarter was still not habitable.

3. Respondents contested the case by filing counter. The main plank of argument of the respondents is that vide Annexure-A/1 dated 18.02.2011, post attached quarters of Sr. Postmaster was dequartered from 15.12.2010 till completion of renovation work and it was reported by the AEE(Civil) Postal Civil Sub-Division, Bhubaneswar vide order dated 04.07.2012(Annexure-R/1) that the civil work of the said quarters was completed on 28.03.2011 and hence the date of occupation was treated as 28.03.2011 and, accordingly, the recovery of HRA paid to the applicant was ordered. Representation preferred by the applicant was considered by the competent authority but the same was rejected. In pursuance, of the order dated 27.02.2013 of this Tribunal in O.A. No. 89/2013, subsequent representation of the applicant was considered by the Chief Postmaster General, Odisha Circle and was also rejected. Submission of the respondents is that as per the statutory rule whoever joins as Sr. Postmaster, Bhubaneswar takes over the quarters automatically and the renovation work, if any required, is being carried out as and when the occupant intimates the department. The incumbent Sr. Postmaster cannot declare himself the postal quarters as uninhabitable and leave the same. CPMG is the competent authority to

declare such quarters as not habitable and is to dequarterize it. Applicant's predecessor had brought to the notice regarding unsuitability of the post attached quarters for residential purpose but was never permitted to leave the quarters. But, keeping in view the request of the applicant, after dequarterizing renovation work was undertaken. Taking a cue from the submission of the applicant that one police personnel and two senior officers of the Department were accommodated in the said quarters, Respondents submitted that the contention of the applicant regarding unsuitability is not genuine. After renovation of the quarters, representation of the applicant for further minor repairing work and asking for more accommodation to keep records is nothing but a tactics to draw House Rent Allowance, which is detrimental to the security and mail arrangement of the post office.

4. The applicant mainly challenges the order dated 30.11.2012 (Annexure-A/6) by which the Sr. Suptd. of Post Offices, Bhubaneswar Division, Bhubaneswar passed an order that HRA paid to the applicant from 28.03.2011 may be recovered from the pay of the Sr. Postmaster, Bhubaneswar GPO from December, 2012 in 20 equal installments. Applicant has also challenged the order dated 10.01.2014(Annexure-A/11) by which the CPMG, Orissa Circle, upheld the aforesaid order of the Sr. Suptd. of Post Offices, Bhubaneswar Division.

5. The whole claim of recovery of HRA is based on the letter dated 04.07.2012 (Annexure-R/1) issued by the Asst. Executive Engineer(C) , Postal Civil Sub Division, Bhubaneswar, to the SSPO,

Bhubaneswar Division, Bhubaneswar by which it has been intimated that the civil work of the said quarters has been executed and completed on 28.03.2011. A doubt has arisen to the effect that if the renovation and repair work of quarters was completed on 28.03.2011 why the same was not intimated on the very day to the Sr. Postmaster and was intimated after more than one year and four months' of completion of the work. The applicant has made representation from time to time stating therein that in spite of repair, the quarters , in question, is not habitable. Not a single inspection was made by superior authority to find out whether quarter is habitable or not or it was fanciful plea taken by the Sr. Postmaster to avoid occupation. The order dated 10.01.2014 (Annexure-A/11) further discloses that said quarter was visited by DPS(Hqrs.), SSPO Bhubaneswar, AEE(Civil) Bhubaneswar and JE(Civil) Bhubaneswar and the Sr. Postmaster has taken possession of the said quarters only on 28.01.2013. So, when the quarters was taken on possession on 28.01.2013, how the Sr. Postmaster shall refund the HRA from 28.03.2011. The quarters is not habitable could not have been believed in ordinary course as in some cases employees take such fanciful pleas to avoid recovery of HRA. But the successor of the present applicant had made a representation to the CPMG, who by his order dated 14.01.2015(Annexure-A/14) directed decategorization of Bhubaneswar GPO due to inadequacy of space and not habitable condition of the Post attached quarters. This order of the CPMG dated 14.01.2015 strengthens the plea of the applicant that the quarters was

not in a habitable condition. Apart from these mess, had there been specific order of the superior authority to occupy the quarters and in spite of that order had the applicant not occupied the quarters certainly he would have become liable for recovery of HRA, which was not the case rather we are convinced that at a subsequent stage by order dated 30.11.2012, the applicant has been asked to pay HRA when the department knew very well that he was not occupying the quarters. Admittedly, the post attached quarters provided to the Sr. Postmaster, GPO Bhubaneswar was declared decategorized due to uninhabitable condition w.e.f. 15.12.2010 till completion of renovation work as evident from the order dated 18.02.2011 (Annexure-A/1). Since, claim of HRA seems to be legal rather admissible, the impugned order of recovery of HRA is liable to be quashed in larger interest of justice, equity and fairplay. Thus, the impugned order under Annexure-A/11 and A/6 being arbitrary are hereby quashed and it is ordered that recovery, if any made from the pay of the applicant in the meantime shall be refunded forthwith within a period of four months hence.

6. O.A is, accordingly, allowed. There shall be no order as to costs

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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