

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 260/00357 OF 2015
Cuttack, this the 13th day of January, 2017

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

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Nilambar Bagh,
aged about 54 years,
Son of Late Krupasindhu Bagh,
Resident of Vill-Badalasahi, Via- Khajuripada,
PO- Baringa, PS- Charichhak, Dist- Baudh,
Odisha, PIN-762012.

.....Applicant

By the Advocate(s)-M/s. C.P.Sahani, P.K.Samal, D.P.Mohapatra.

-Versus-

Union of India, represented through its

1. Secretary-cum-Director General of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110116.

2. Chief Post Master General,
Odisha Circle, At/PO-Bhubaneswar,
Dist-Khurda, Odisha-751001.

3. Senior Superintendent of Post Offices,
Puri Division,
Puri-752001.

.....Respondents

By the Advocate(s)- Mr. B.Swain

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ORDER

A.K.PATNAIK, MEMBER (J):

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 challenging the Memo No. D/OA-260/00111/2015 dated 27.05.2015 and the Order No. D-194 dated 14.02.2014.

2. Short facts of the case are that the applicant had joined as Sub-Postmaster, Madhyakhanda SO of Puri Division on 28.06.2007 and worked in that post till 15.07.2011. Subsequently, he was transferred from Madhyakhanda SO and joined as Sub-Postmaster, Godipada SO on 29.09.2011. During his incumbency both at Madhyakhanda SO and Godipada SO, the applicant did not occupy the post quarters due to the uninhabitable, unhygienic and dilapidated condition of the said quarters. Informing the same applicant represented to Respondent No.3 on 21.12.2013 for grant of HRA and refund of the electricity charges deducted from his pay, which, however, was rejected by the Respondent No.3 on 14.02.2014 (Annexure-A/4). Thereafter, he made a representation to the CPMG, Odisha (Respondent No.2) on 13.03.2014, which was also rejected on 23.05.2014 (Annexure-A/6). The applicant challenged the said order before this Tribunal in O.A. No. 260/00111/2015, which was disposed of on 11.03.2015 by quashing the said rejection order dated 23.05.2014 and the matter was remitted back to the Respondents for reconsideration within a period of 60 days. In pursuance of the order of this Tribunal, the case of the applicant was again considered but the same was rejected vide order dated 27.05.2015 (Annexure-A/10). Accordingly, the applicant has filed this O.A. with the following prayers:

- “(i) Admit the Original Application, and
- (ii) After hearing the counsels for the parties be further pleased to direct the Respondent(S) to grant the HRA to the applicant in lieu of post quarters for the period of his incumbency as Postmaster at Madhyakhanda SO and Godipada SO, along with

refund license fee and electricity charges deducted, quashing the impugned orders vide Memo No. D/OA-260/00111/2015 dated 27.05.2015 at Annexure-A/10 and Order No. D-194 dated 14.02.2014 at Annexure-A/4.”

3. By filing counter, the Respondents have refuted the claim of the applicant. The stand of the Respondents in their counter is that applicant while working as Sub Postmaster Mahipur SO under Nayagarh HO was transferred to Madhyakhand SO under Nayagarh HO and worked from 28.06.2007 to 15.07.2011 and did not occupy the post quarters during his incumbency at Madhyakhand SO on the plea that the post quarters was not in habitable condition. He represented for refund of excess deducted electric charge during his incumbency at Mahipur SO and HRA in lieu of quarters for the period of incumbency at Madhyakhand SO. His representation dated 20.08.2011 in this regard was considered and the excess amount of Rs. 1734/-, which was deducted, was refunded to the applicant vide Memo dated 28.10.2013. So far as payment of HRA during his non-occupancy of post quarters at Madhyakhand SO from 28.06.2007 to 15.07.2011 is concerned, it has been stated that the HRA was not drawn as the applicant was working in the post of SPM, Madhyakhand SO having a post attached quarters and by that time, the quarters was not officially dequarterised.

The applicant while working as sub Postmaster at Godipada SO under Nayagarh HO occupied the post quarters from 29.09.2011 to 30.04.2012. Reporting unsuitability of the post quarters on 18.10.2013, he

represented on 21.12.2013 for HRA in lieu of post quarters both for Madhyakhand SO and Godipada SO, which was considered by the competent authority and the same was rejected on the ground that neither the post quarters were dequarterised nor the applicant was granted prior permission to stay outside. Relying on DG (Post) letter No. 7-6/99-bldg dt. 11.07.2007 (Annexure-R/1), Respondents have submitted that since it was mandatory for the employee to occupy the attached rent free accommodation, wherever available, the HRA was not drawn in favour of the applicant, which was communicated to the applicant vide office letter dated 14.02.2014.

4. By filing rejoinder, the applicant has more or less reiterated the submission made in the O.A.

5. Heard Mr. C.P.Sahani, Ld. Counsel for the applicant, and Mr. B.Swain, Ld. Addl. Central Govt. Standing Counsel appearing for the Respondents, and perused the documents placed on record.

6. Mr. Sahani, Ld. Counsel for the applicant, by placing reliance at Annexure-A/8 & A/9 of the O. A. submitted that after repeated complaints of the applicant about the condition of the post quarters both at Madhyakhand SO and Godipada SO, the SSPOs, Puri Division (Respondent No. 3) directed the respective Inspectors of Posts to verify and submit report in respect of the post quarters. In obedience to the order of SSPOs Puri Division (Respondent No. 3), the Inspector of Posts, Nayagarh West Sub-Division made field verification in respect of

the post quarters at Madhyakhand SO and submitted his report on 02.03.2012. In the said report, it was clearly mentioned with reasons that the post quarters at Madhyakhan SO is uninhabitable and it was suggested to dequarterise the same. The Inspector of Posts, Nayagarh West Sub-Division in his report, which is at Annexure-A/8 of the O.A, specifically mentioned the condition of the post quarters and reported that, **“In the above circumstances, the post quarter portion may not be considered habitable to dwell in with family. Hence, the house owner of the building may be asked to make necessary repairing works to make it habitable. And till repairing of the quarter portion, the PO building may be considered as dequarterised”**. Similarly, the Inspector of Posts, Nayagarh East-Sub Division made field verification in respect of the condition of post quarters at Godipada SO and submitted his report vide letter No. D/Misc/2014 dated 11.06.2014(Annexure-A/9 of the O.A). In the report dated 11.06.2016 it is clearly mentioned that the post quarters at Godipada SO is unsuitable and unhygienic to live in. Therefore, while considering the claim of the applicant, the Respondent No. 3 deliberately over looked the reports submitted by the Inspectors of Posts in respect of the condition of the post quarters both at Madhyakhand SO and Godipada SO and arbitrarily rejected the claim of the applicant.

7. On the stand of the Respondents that the applicant did not get prior approval from the competent authority for vacating the post

quarters, Mr. Sahani submitted that it is not acceptable as the condition of post quarters at Madhyakhand SO and Godipada SO were dilapidated, cramped, unhygienic and uninhabitable and after the repeated representations from the applicant, Respondent No.3 did not take any step to dequarterise the said quarter. The floor area of both the post quarters at Madhyakhand SO and Godipada SO as mentioned by the Respondents at Annexure-A/7 of the O.A. are inadequate as per the departmental rules and yardstick of the space required for post quarters and hence the applicant was unable to occupy the post quarters. The applicant relying on the case of **Shantistar Builders Vs Narayan Khimalal Totame, reported in (1990) 1 SCC 520** submitted that in the said order Hon'ble Supreme Court has held that ".....the right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in". In the case of **Chameli Singh Vs State of U.P. reported in (1996) 2 SCC 549**, the Hon'ble Apex Court has held that the right to life includes the necessary infrastructure to live with human dignity. The applicant has also relied upon the order dated 03.01.2011 passed by this Tribunal in O.A. No. 245/2010 in the case of Niranjana Nayak vs UOI, in which it has been observed as under:

“From the contents of the letter it is clear that the post quarter was not inhabitable position for the stay of the Applicant. It was also inadequate according to the yardstick of the space for the post

quarter. Merely because the predecessor was and successor is residing in the quarters cannot be a ground to deny the applicant has legitimate right to get the HRA & CA in lieu of the accommodation. Applicant has been agitating the difficulty and expressing his inability to reside in the quarters. Non-availability of suitability accommodation cannot be a ground to compel the applicant to reside in the post quarters which is inadequate and having no minimum requirement for one's residing..."

On the strength of the above submissions, the Ld. Counsel for the applicant has prayed for grant of the relief as claimed in this O.A.

8. On the other hand, Mr. Swain, Ld. ACGSC appearing for the Respondents, reiterating the stand taken in the counter affidavit has submitted that the post quarter was neither dequarterised nor the applicant was accorded any prior permission by the competent authority to vacate the post quarter and, accordingly, his representation for grant of HRA and refund of license fee were rejected.

9. It is an admitted position, as reported by the concerned authorities on field inspection that the posts quarters at Madhyakhand SO and Godipada SO were not in habitable conditions even if those were not dequarterized by the respondent-authorities. Dequarterization is a matter which no doubt requires the approval and sanction of the competent authorities in this respect. At the same time, the fact that an employee because of certain constraints of the Department shall be allowed to reside in a quarters which per se is not habitable leaving himself and family in a state of predicament cannot be brushed aside. Similarly, permission to leave outside the post quarters could have also been

considered by the respondent-authorities on his representations being made describing the uninhabitable conditions of the post quarters. In my considered view, in such a situation the authorities instead of being callous should have taken into consideration seemingly the plight to be faced by the applicant had he occupied the post quarters. Therefore, it is a case where apparently liability has been fixed on the applicant and he has been saddled with the payment of HRA from his salary for no fault of his. In view of this, it is a case where due to laches on the part of the respondents, applicant has been made to suffer.

For the reasons stated above, impugned orders dated 27.05.2015(A/10) and dated 14.02.2014(A/4) are quashed and set aside. Resultantly, respondents are directed to make payment of HRA in lieu of post quarters for his incumbency as Postmaster at Madhyakhand SO and Godipada SO. This exercise shall be completed within a period of three months from the date of receipt of this order. In the result, the O.A. is thus allowed. No costs.

(A.K.PATNAIK)
MEMBER(J)

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