

(2023) 01 CAT CK 0016

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00182 Of 2001

Satyananda Nayak

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-01-2023

Acts Referred:

Citation : (2023) 01 CAT CK 0016

Hon'ble Judges : Swarup Kumar Mishra, Member (J); Pramod Kumar Das, Member (A)

Bench : Division Bench

Advocate : B.K. Nayak-3, G.R. Verma

Final Decision : Allowed

Judgement

Swarup Kumar Mishra, Member (J)

1. The precursor of the matter is that the applicant was allotted with a Type-III quarters bearing no. 49/T-III at Survey of India residential colony, Bhubaneswar, vide letter dated 03.11.1995 where is stayed till 13.12.1998, on which date, by taking leave, he went to his native village to see his ailing mother and he himself fell ill there. One Kabita Pradhan entered into the said quarters in his absence by breaking the door-lock and submitted representation on 22.12.1998 stating that she is his wife, named Pramila Kabita Nayak. After coming to know, on 28.12.1998 the applicant intimated the respondent no.3, in charge of the quarters for taking action to evict her, she being not his wife. Thereafter, on 20.02.1999, the applicant submitted representation to Estate Officer, to take over the possession of the quarters on 01.03.1999 followed by letter dated 30.03.1999. The applicant was not paid HRA from December, 1998 and consequential deduction towards license fee etc were also made from his salary. There being no tangible effect on the repeated requests of the applicant, he has approached this Tribunal praying inter alia to direct the respondents to pay dues and HRA deducted from the applicant's salary from Dec., 1998 onwards in respect of quarters No. 49/T-III, Survey of India, Colony with interest and

compensation, which was dismissed by the order of this Tribunal dated 09.02.2004, an excerpt of it reads as under:

"5. Having heard the parties and upon going through the pleadings, it is seen that the Applicant neither handed over the vacant possession of the quarters, as per the Rules nor has ever made any FIS/ complaint before the Police with regard to the incident. If some-body/trespassed, during his absence, it was the bounded duty of the Applicant to first, lodge FIR before the Police. Instead of doing so, he has gone on filing representations. Another aspect of the matter is that the episode started from December, 1998 as per his prayer, but he has only approached this Tribunal on 9th May, 2001, which shows that the Applicant was not so serious about the issues and when he failed to evict the lady, has approached before this Tribunal to throw the mud on the Respondents. It is also seen that he has approached before the Hon'ble High Court of Orissa for the lady from the quarters and has filed 1-CC and Os cases before the appropriate forum. He has not made also party to the lady, who is allegedly staying in the quarters to have his say in the matter. The Applicant, though has raised very many allegations against the Respondents, but no individuals have been made party to this C.A. to have his/their say in the matter. In this view of the matter, we find no merit in this O.A.; which is accordingly dismissed."

2. The applicant challenged the order of this Tribunal before the Hon'ble High Court of Orissa in WP(C) No. 3596/2004. While the matter stood thus, the dispute between applicant and Kabita Pradhan was set at rest after dismissal of the SLP by the Hon'ble Apex Court, ultimately upholding that Kabita Pradhan is not the legally married wife of the applicant and that she is a trespasser to the quarter in question. By taking into consideration the aforesaid fact, the Hon'ble High Court of Orissa quashed the order of this Tribunal dated 09.02.2004 in OA 182/2001 for fresh adjudication by giving opportunity of hearing to the parties. The observation of the Hon'ble High Court of Orissa being relevant is quoted hereunder:

"6. The undisputed fact, as emerged from the records available before this Court, is that one Kabita Pradhan had occupied the quarters in question which was allotted in favour of the petitioner. The petitioner claims that Kabita Pradhan is not his wife and, as such, he is not liable to pay the house rent and the electricity charges for the said quarters. The facts which are now brought to the notice of this Court were not placed before the tribunal while passing the final order. Therefore, this Court is of the considered view that if by virtue of a civil court decree Kabita Pradhan has been declared as not the wife of the petitioner, she should have been declared as a trespasser to the quarters allotted in favour of the petitioner. Therefore, for un-authorized occupation of the quarters by Kabita Pradhan, who is a trespasser, the petitioner is not liable to pay the house rent as well as the electricity charges, which have been forcibly deducted by the authorities from his salary in spite of intimation given by the petitioner to them. In the above premises, without delving into the merits of the case itself, this

Court is of the considered view that in the event the matter is remanded back to the tribunal, the tribunal shall take into consideration the subsequent developments, that have taken place in the meantime, in proper perspective on the basis of documents filed by the petitioner and readjudicate the same afresh by giving opportunity of hearing to all the parties.

7. In the above view of the matter, the order impugned dated 09.02.2004 passed by the tribunal in O.A. No. 182 of 2001 under Annexure-9 is hereby set aside. The matter is remitted back to the Central Administrative Tribunal, Cuttack Bench, Cuttack, for fresh adjudication on the basis of the documents to be filed by the petitioner by way of an additional affidavit, by giving opportunity of hearing to the parties."

3. Accordingly, the OA was restored and listed for hearing.

4. After giving thoughtful consideration to the arguments advanced by the respective parties, perused the records vis a vis the date chart and tentative calculation sheets of deductions made from the salary of the applicant from 17.12.1998 to 31.08.2014.

5. It is not in dispute that HRA is being paid to an employee in lieu of the quarters not being provided by the government or taken by an employee. The quarters in question belong to department. When the applicant gave in writing for taking necessary action against one Kabita Pradhan, not known by him, who had broken the door lock in his absence and staying in the quarters, it was the bounden duty of the authority concerned to take necessary action, if necessary, with the help of the law and order authority to evict her instead of asking the applicant to hand over the vacant position of the quarters. But, instead of taking such action, the respondents kept silent over the matter, however, by virtue of a civil court decree Kabita Pradhan has been declared as not his wife and, therefore, it is established that the quarters, in question, was not in possession of the applicant but under the possession of an unauthorized person, who had entered into the quarters forcibly by breaking the door lock, which fact was brought to the notice of the respondents immediately after such incident. Therefore, deduction made by the respondents towards HRA and other ancillary dues for the quarters, in question, from the salary of the applicant after 22.12.1998 is held to be illegal and arbitrary in view of the observation of the Hon'ble High Court of Orissa referred to above. Hence, the respondents are directed to pay the applicant HRA and to refund the deductions made from his salary towards occupation of quarters.

6. Accordingly, the OA stands allowed. Parties to bear their own costs.