

(2009) 05 OHC CK 0040

In the Orissa High Court

Union of India (UOI) and Others

APPELLANT

Vs

Sushil Kumar Rath

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Citation : (2009) 108 CLT 499 : (2009) 2 OLR 861 Supp

Hon'ble Judges : L. Mohapatra, J;I. Mahanty, J

Bench : Division Bench

Judgement

1. Mahanty, J.—The present Writ Petition has been filed by the Petitioners-Union of India through the Chief Postmaster General, Orissa Circle, Bhubaneswar seeking to challenge the Judgment & Order Dated 6.5.2005 passed by the Learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1435 of 2003.

2. The Learned Tribunal by passing the impugned Judgment had come to allow the original application filed by the applicant/Opposite Party Sri Sushil Kumar Rath, Postmaster, Malkanagiri, Mukhya Dakghar claiming payment of House Rent Allowance (in short "HRA") in lieu of providing attached post quarters with effect from 17.7.2001 at the admissible rate & to direct the Respondents/Petitioners to refund the amount recovered from his pay towards the electricity charges & also to pay the HRA as per his entitlement as a Central Government employee.

3. The original application filed by the Opposite Party came to be disposed of by the Tribunal by holding that the decision of the Respondent No. 3-Senior Superintendent of Post Offices, Koraput Division in not paying HRA to the applicant-Sushil Kr. Rath & deducting electricity charges at the rate of Rs. 120 per month was found to be unsustainable in the eye of law & accordingly direction was issued to Respondent No. 3 immediately stop deduction of electricity charges from the salary of the applicant & also to refund what ever the amount had been deducted from his salary so far with interest at the rate of 9% per annum. Accordingly, direction was issued to the Respondents to refund the amount of electricity charges recovered from his pay & also to stop any other

deduction forthwith. Apart from this order was also passed directing the Respondent No. 3-Senior Superintendent of Post Offices, Koraput to pay HRA to the applicant as per entitlement from the month of July, 2001 in lieu rent free accommodation, the matter was directed be placed before the Postmaster General, Berhampur Region, Berhampur to take a view in the matter after hearing both the parties as to whether the accommodation inside the post office earmarked for the residence of the Postmaster could have been used for such purpose or not & depending on such finding the request of the applicant/ Opposite Party for HRA in lieu of rent free accommodation should be decided.

4. Mr. Rath, Learned Counsel for the Opposite Party submitted that pursuant to the impugned Judgment, the Postmaster General, Berhampur Region, Berhampur passed a detailed order on 28.3.2006 to the following effect, which reads as follows:

Sri S.K.Rath has not stayed in the post-attached quarters of Malkangiri MDG since his joining as SPM in the year 2001. He has not experienced how easy or difficult it is to stay there. His saying that the floor washing water does not go out from the rooms of the building without staying even for a day is just imaginary. On the contrary, we have evidence that in this very accommodation his predecessor has lived & the position has not changed in the matter of facility/ accommodation available in it. Rather, by not occupying the accommodation, Sri Rath is responsible for rendering it dirty & un-maintained. The department has been incurring money by paying money to the Landlord for the accommodation hired for the SPM & it is lying unused bringing loss to the department.

The Petitioner Sri S.K. Rath demands house rent in lieu of rent free accommodation. The department has already taken some space for his accommodation & it incurs rent month after month for this. Now, if the unreasonable request of Sri Rath is accepted then the department will have to incur double the expenditure-(1) for the building already taken on rent for the purpose of residence of Postmaster, Malkangiri & (2) for the expenditure on HRA in lieu of rent free accommodation. This is neither permissible nor a financially productive decision for the department.

5. Therefore since the impugned order during the pendency of the present challenge has been complied with in so far as, taking a decision on the matter of payment of HRA in lieu of rent free accommodation is concerned, having been already determined by the Postmaster General, Berhampur Region, Berhampur, no further direction in this regard is called for in the present writ application. Accordingly, this aspect of the impugned Judgment of the Tribunal having been already complied with, it shall remain open for the Opposite Party to seek appropriate redressal against the said finding, if so advised.

6. The only point left for adjudication in the present petition relates to the direction passed by the Tribunal to the Respondent No. 3-the Senior superintendent of Post Offices, Koraput Division, to forthwith stop effecting

deduction of electricity charges from the salary of Sri Sushil Kr. Rath (OP), since the Opposite Party has never occupied or utilized the rent free accommodation made available to him & to effect refund of all deductions of electricity charges from the salary of the Opposite Party. So far as this aspect of the impugned Judgment is concerned, we are in respectful agreement with the views expressed by the Learned Tribunal inasmuch as, since admittedly the Opposite Party never occupied the rent free accommodation offered to the Opposite Party by the postal authorities, attached to the post office, such charges could only have become payable had the Petitioner occupied the premises & not otherwise.

6. (SIC) Therefore, in view of the above, we affirm the Judgment of the Learned Tribunal to the aforesaid extent & dispose of the Writ Petition as such, while reiterating herein that, in the event the Opposite Party is affected by the Order Dated 28.3.2006 passed by the Postmaster General, Berhampur Region, Berhampur refusing to grant him HRA in lieu of rent free accommodation, it shall be open for him to re-agitate the matter before the Tribunal, if so advised.

7. With the aforesaid observation & direction the Writ Petition is disposed of.

L. Mohapatra, J.

I agree.