

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9287 of 2012

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Rabindra Mishra, son of Late Bhawdeo Mishra, Ex. Senior Manager (C&M), resident of Flat No. H-103, Phase III, NTPC Vihar, Ambedkar Path, P.S.-Rupaspur, District -Patna

.... Petitioner

Versus

1. The Chairman cum Managing Director, NTPC Ltd Scope Complex, 7 Institutional Area, Lodi Road, New Delhi
2. The Director (HR), NTPC Ltd. Scope Complex, 7 Institutional Area, Lodi Road, New Delhi
3. The Regional Executive Director, NTPC Ltd. Lok Nayak Jaiprakash Bhawan, 2nd Floor, Fraser Road, Patna
4. The General Manager (HR), NTPC Ltd. Lok Nayak Jaiprakash Bhawan, 2nd Floor, Fraser Road, Patna
5. The Senior Officer (HR), NTPC Ltd. Lok Nayak Jaiprakash Bhawan, 2nd Floor, Fraser Road, Patna

.... Respondents

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Appearance :

For the Petitioners : Mr. Amaresh Kumar Sinha, Advocate.

For Respondent-Corporation: Mr. Anil Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-10-2017

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing the letter bearing reference no. ER-1 HQ : HR-EB/2011/1828 dated 12.09.2011 (as contained in Annexure-6) issued by the respondent no. 5 whereby the petitioner has been directed to refund a sum of Rs. 1,57,896/- (Rs. One Lakh Fifty Seven Thousand Eight Hundred Ninety Six only) to NTPC Ltd. which was paid to the petitioner as arrear of lease rent from 26.11.2008 to 31.10.2009. A further prayer for release



of payment for performance related dues of the petitioner for the year 2009-10 and other reliefs are not pressed as the same having already been granted to the petitioner have become infructuous and are accordingly dismissed as such.

3. Learned counsel for the petitioner submits that the petitioner was given self-leased accommodation and for which he was being paid a sum of Rs. 8,960/- per month by the respondent NTPC. A circular dated 16.09.2009 came to be issued by the NTPC by which the monthly rent towards lease accommodation was revised with retrospective effect from 26.11.2008 and the lease rent for the present purposes was enhanced from Rs. 8,960/- to Rs. 23,100/- per month. Based on the said circular dated 16.09.2009, the petitioner made a claim for enhanced lease rent by his letter dated 19.10.2009 which was granted and the lease rent at the enhanced rate was paid to the petitioner for the period 26.11.2008 upto 31.10.2009.

4. It is further submitted that the excess amount of enhanced lease rent paid at the enhanced rate has been sought to be recovered from the petitioner in terms of the impugned letter dated 12.09.2011 which is wholly arbitrary and contrary to the circular dated 16.09.2009. It is stated that there is nothing in the said circular which prohibited payment of the enhanced lease rent to employees who had superannuated prior to the date of issuance of the circular and on which ground alone the recovery is sought to be made.



5. Learned counsel for the respondent NTPC opposes the writ petition, submitting that the petitioner had already superannuated on 30.06.2009 which was prior to the issuance of the circular dated 16.09.2009 and thus the circular could not be made applicable to the petitioner who was no longer on the rolls of NTPC on that date. The circular was meant to apply and grant benefit to employees who were working on the date of issuance of the circular and not to persons who had already superannuated prior thereto. He refers to an Inter Office Memo dated 23.05.2011 (Annexure-R/6 of the counter affidavit) which is in the nature of a clarification in the background of the circular in question, to the effect that there had been no enhancement in lease rental while the petitioner was on the rolls of the company and hence the benefit of enhanced lease rental could not be made available to him. It is submitted that the enhanced lease rent has inadvertently been paid to the petitioner through sheer inadvertence though the petitioner was not entitled to the same.

6. Having heard learned counsel for the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. The broad facts of the case were not in dispute. The petitioner admittedly superannuated on 30.06.2009 and the circular providing for enhanced lease rent with retrospective effect from 26.11.2008 was issued subsequently on 16.09.2009 and well after the petitioner's superannuation. The petitioner's application was made on



19.10.2009 claiming benefit of the said circular and the respondent NTPC allowed the claim of the petitioner and made payment on 21.07.2010 at the enhanced rate of lease rent for the period 26.11.2008 upto 31.10.2009. The respondent NTPC has taken the stand that such payment has been made inadvertently and through sheer mistake as the petitioner was not entitled to the enhanced lease rent having superannuated prior to issuance of the circular. It is therefore admitted that the petitioner has in no way misrepresented the facts or was otherwise at fault. He made a claim based on the circular which was allowed by the respondents. No deliberate action of mala fide nature has been imputed to the petitioner.

7. That apart, even a perusal of the circular dated 16.09.2009 shows that the enhanced lease rent was made available with retrospective effect without reservation in respect of all executives below Board level without exception. Learned counsel for the respondents has not pointed out any corrigendum to the said circular to support his submission that the circular was not applicable to employees who had already superannuated on the date of issuance of the circular.

8. In the above circumstances, the impugned letter dated 12.09.2011 (Annexure-6) directing the petitioner to refund the amount of Rs. 1,57,896/- paid to him as arrear of lease rent for the period 26.11.2008 to 31.10.2009 cannot be sustained and is hereby quashed.



9. The writ petition stands allowed.

Md. Ibrarul/BT

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13.10.2017
Transmission Date	N.A.

