IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OAC) No.1514 of 2011

Sushanta Nanda .... ***Petitioner***

Mr. B.S.Tripathy,
Advocate

-versus-

State of Odisha & others .... ***Opposite Parties***

Mr. H.K.Panigrahi,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
17.02.2022.

Order No.

01. 1. This matter is taken up through hybrid mode.

2. The Petitioner has filed the present application claiming the following relief(s):-

> "(i) quash the impugned order of rejection of the appeal dated 9.5.2011 under Anbnexure-7 read with impugned order of cancellation of quarter dt.24.1.2011 under Annexure-5 by concurrently holding the same as bad, illegal and without jurisdiction in law;
>
> (ii) pass such order(s) as would be deemed fit and proper in the facts and circumstances of the case."

3. The facts of the case are that the Petitioner while working as Junior Stenographer in the Office of Commercial Tax Officer, Cuttack-1, West Circle in or about 20th August, 1990 was allotted a Government Quarter bearing No.2RB-Q-187 at Badambadi, New LIC Colony, Cuttack w.e.f. 15th November, 2000. In the year 2006 he was promoted to the post of Senior Stenographer and in August, 2007 he was promoted to the post of Asst. Commercial Tax Officer. Subsequently, he was transferred to Jagatsinghpur Circle at Paradeep and he was relieved on 21st August, 2007. The Petitioner claims to have been allowed to retain the Quarter till 8th February, 2008 when he was directed by the Asst. Commissioner of Commercial Taxes, Cuttack-1 Range to vacate the quarter by 29th March, 2008 (Annexure-1 to the Writ Petition). The Petitioner had filed a representation under Annexure-3 to the Writ Petition with a request to the said authority to allow him to continue to occupy the quarter, but there was no response. In June, 2010, the Petitioner was transferred to Laxmannath Unified Check Gate and as no quarter was available at his new place of posting and there was no one to look after his family members at Cuttack, he retained the quarter. It is further stated that the daughter of the Petitioner was prosecuting her studies in Class-IX. On 24th January, 2011, an Office order was passed by the Joint Commissioner of Commercial Taxes, Cuttack-1 Range (Opposite Party No.3) cancelling the allotment of Quarter w.e.f. 22nd November, 2007 and by fixing the market rent @ Rs.5,800/- per month w.e.f. 1st November, 2009 with further

stipulation that the same would be recovered from his monthly salary. The said order is enclosed as Anneuxre-5 to the Writ Petition. The Petitioner preferred an appeal to the Commissioner of Commercial Taxes, Orissa, Cuttack (Opposite Party No.2) on 25th February, 2011 taking certain specific grounds. The said Appeal Memo is enclosed as Annexure-6 to the Writ Petition. However, the appellate authority rejected the appeal vide order dated 9th May, 2011, enclosed as Annexure-7 to the Writ Petition. In the mean time, the Petitioner has vacated the quarter on 1st February, 2010.

4. A counter affidavit has been filed on behalf of Opposite Party Nos.1 and 2 denying the averments and by taking the specific plea that the occupation of the quarter by the Petitioner despite his transfer unauthorizedly for three years was contrary to the Rules and the appeal petition filed by the Petitioner being devoid of merit was rightly rejected.

5. Heard Mr. B.S.Tripathy, learned counsel for the Petitioner and Mr. H.K.Panigrahi, learned Addl. Standing Counsel for the State.

6. Though several contentions were raised by the learned counsel appearing for the parties before this Court, it is observed that the impugned order under Annexure-7 whereby the appeal of the Petitioner was rejected does not contain any reasons. It simply states that the appeal petition submitted by the Petitioner has not been considered being devoid of merit

and that the cancellation of allotment of the Quarters by the allotting authority is just and proper as per the Rule. Though it is stated that cancellation of allotment is just and proper as per the Rule, but it is not mentioned as to which rule was referred to by the appellate authority. Though under Paragraph-3 of the counter affidavit rejection of the appeal has been sought to be justified, yet no reason has been cited in support thereof. A perusal of the appeal petition enclosed as Annexure-6 to the Writ Petition would reveal that the Petitioner had raised several grounds including the ground of annual examination of his daughter in the context of Rule 107-A of the Orissa Service Code as also the legality of retrospective cancellation of the allotment of Quarter. Other grounds such as justifiability of imposition of market rent were also raised. The appellate authority has, however, not cited any ground whatsoever for rejecting the grounds urged by the Petitioner in his appeal. It goes without saying that the reason is the soul of an order passed by the authority in absence of which the same becomes vulnerable. Unless it is known as to what weighed upon the mind of the appellate authority while rejecting the appeal filed by the Petitioner, it is hardly possible for this Court to form a definite opinion as regards the correctness or otherwise thereof. To the above extent, therefore, the impugned order cannot be sustained in the eye of law warranting interference thereby.

7. In the result, the impugned order under Annexure-7 is hereby set aside. The matter is remitted to the appellate

authority to decide the appeal afresh by considering the specific grounds urged by the Petitioner in his appeal petition vis-à-vis the rules/circulars of the Government read with the provision under Section 107-A of the Orissa Service Code and to pass a reasoned order after giving an opportunity of hearing to the Petitioner. The whole exercise shall be completed within a period of two months from the date of receipt of certified copy of this order.

8. The WPC (OAC) is disposed of accordingly.

9. Urgent certified copy of this order be granted on proper application.

(Sashikanta Mishra)
Judge

AKB