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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.120 of 1986.

Date of decision : June 30, 1987.

Bipra Charan Mohanty ... Applicant.

Versus

Union of India and another ... Respondents.

For Applicant : Mr. B. Gajapati, Advocate.
Mr. A. B. Misra, Sr.

For Respondents: ~~Mr. Ganeswar Rath, Addl. Standing Counsel~~
(Central)

Corrected vide order
No.13 dt. 3.8.87.

[Signature]
Vice Chairman

[Signature]
Member (J)

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *yes*.
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the impugned order reinstating him in a lower post and to command the Respondents to absorb him in the post from which he was compulsorily retired. Further prayer of the applicant is to command the Respondents to post the applicant at Bhubaneswar and to pay him all his arrear emoluments to which he would be entitled under the Rules, in respect of the post from which he was compulsorily retired.

2. Shortly stated, the case of the applicant is that he joined as Lower Division Clerk in the Field Publicity Office, Directorate of Field Publicity, Ministry of Information and Broadcasting, Government of India and was posted at Bhubaneswar. The applicant joined the said post on 6th March, 1957. In course of time he was given promotion to different posts and ultimately while the applicant was serving in the promotional post i.e. Group B post, Administrative Officer in the Regional Office, Directorate of Field Publicity, Arunachal Pradesh, and was posted at Pasighat, he was transferred from Arunachal Pradesh and joined at Raipur in August, 1984 as Administrative Officer. The applicant was prematurely retired from service under clause (j) (i) of Rule 56 of Fundamental Rules vide order No.A-40011/2/85-Vig. (vi) dated 23rd August, 1985 forming subject matter of Annexure-III which is under challenge. Thereafter, the applicant made several representations for setting aside the order prematurely retiring the applicant and to reinstate him into service.

Ultimately the Ministry of Information and Broadcasting vide their order dated 1st December, 1986 (vide Annexure-XI) conveyed the decision of the President that the applicant should be reinstated into Government service as Accountant, a Group C post in the Directorate of Field Publicity with immediate effect. The applicant feels aggrieved in regard to the second part of the order i.e. reinstatement of the applicant to the post of Accountant, Group C post which is lower in rank than the post which he was holding at the time of compulsory retirement. Hence the jurisdiction of this Tribunal has been invoked by the applicant with the above mentioned prayers.

3. In their counter, the Respondents maintained that no illegality has been committed by reinstating the applicant to a lower post as it was solely on the request of the applicant and therefore law of estoppel would eventually arise against the applicant.

4. Before dealing with the merits of the contentions put forward on behalf of either parties the preliminary objection which was raised on behalf of the Respondents regarding the territorial jurisdiction of this Bench should be first decided. It was contended by learned ^{Senior} Addl. Standing Counsel (Central) that the applicant having been compulsorily retired while serving at Raipur (Madhya Pradesh), this Bench lacks in its territorial jurisdiction to give due relief to the applicant, on questions of fact even if the applicant is legally entitled to it. A case of similar nature came up for consideration before this Bench which formed subject-matter of

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Member (J) 3/8/87

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Transferred Application No.184 of 1986. This was disposed of on December 24,1986. The petitioner in the said case was called for an interview and was ultimately selected for appointment to the post of Catering Manager and by letter dated 27.3.1979 issued by the Railway Service Commission the petitioner was intimated that he was selected in the selection test and later the petitioner was intimated by the General Manager, North-Eastern Railway that he had been selected as Catering Manager and the petitioner was asked to report to duty on or before 10.4.1980 at Gorakhpur. The petitioner appeared before Respondent No.4 in the said case and he was directed to appear in the medical examination. He did so. Thereafter the petitioner came back to Cuttack and was informed to his Cuttack address that he should file a representation and that his letter of appointment should be issued in his Cuttack address and accordingly the petitioner did so. Thereafter no intimation having been received from the appropriate authorities, the petitioner filed a writ application in the Hon'ble High Court of Orissa which was ultimately transferred to this Bench under section 29 of the Administrative Tribunals Act,1985. In the said case a preliminary objection was taken that Courts/Tribunal in Orissa have no territorial jurisdiction over a matter which arose at Gorakhpur. This Bench overruled the contention put forward on behalf of the respondents- Opposite parties challenging the territorial jurisdiction of this Bench after accepting the view in a similar case which had arisen in the Orissa High Court holding that the Orissa High Court had territorial jurisdiction to exercise over the

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Principal, Regional College, Warangal (A.P.) in the peculiar facts and circumstances of the case because a part of the cause of action had arisen at Cuttack. Similar question is involved in the present case. Before we deal with the principles laid down by the Hon'ble High Court of Orissa, it is worthwhile to note that in case of Khalil Khan and others vrs. Mohabul Ali Mian and others reported in AIR 1949 P.C.78, Their Lordships in paragraph 61 have laid down that cause of action means every fact which may be necessary for the plaintiff to prove being traversed, in order to support his right to the judgment. In a case reported in A.I.R 1971 Madras 155 (L.V. Veeri Chettiar and another versus Sales Tax Officer, Bombay), it has been held by the Hon'ble High Court of Madras that cause of action has always been understood as referable to the bundle of facts in a legal proceeding and if a limb of that bundle of facts is available, seen or discernible in one particular place which is a seat of the High Court such High Court has the power to exercise all the powers conferred on it under Article 226(1-A) of the Constitution. Similar view has also been taken by the Hon'ble High Court of Orissa in a case reported in 1977(1) OWR 4401 (The Orissa Mining Corporation Ltd. & another versus The Joint Secretary, Ministry of Finance and others). In the case of S.P. Gantayat vrs. Principal, Regional Engineering College, Warangal (A.P) (supra), the case of the petitioner before Their Lordships was that his son, Sudhanshu Gantayat aged 17 years after passing I.Sc. Examination from the Utkal University had made an application for a seat in B.Tech. First Year class in

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Regional Engineering College, Warangal which was duly forwarded through the Director, Technical Education, Orissa. Four seats in the First Year Class of B.Tech in the college were reserved for the students of Orissa. The Principal of the College sent a letter to Cuttack requesting the petitioner's son to be present in the College with his original certificate etc. and in pursuance thereto the petitioner and his son appeared before the Principal on the date fixed. The son of the petitioner was admitted into the College and he was allotted Roll No.6309. Thereafter, the petitioner received a registered letter from the Principal of the College intimating that the provisional admission of Sudhansu was cancelled as the same was due to a clerical error. For adjudication of this matter by the Hon'ble High Court of Orissa, a preliminary objection was taken as to the exercise of territorial jurisdiction and Their Lordships after considering the above mentioned judgments in the case of S.P.Gantayat (supra) have held that if a part of the cause of action has arisen within the territorial jurisdiction of a particular High Court especially when and where the plaintiff/petitioner suffers the consequences then such High Court had jurisdiction to adjudge the matters forming subject matter of the litigation in question. It has now been held by the Hon'ble Supreme Court of India in writ application Nos.12437/85 and 238 of 1986 disposed of by the Hon'ble Supreme Court on 9th December, 1986 reported in AIR 1987 SC 386 (Sampat Kumar vrs. Union of India) that Administrative Tribunal is a substitute for the High Court and not supplemental and therefore in our opinion if the High Court could exercise territorial jurisdiction

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over a matter in which the respondent-Opp. party was residing in Andhra Pradesh and his office was situated in the same State and following the same view, we had held in the said case that this Bench could exercise jurisdiction over a matter arising at Gorakhpur because a certain part of the consequences had arisen at Cuttack, In the present case, we have to now find out as to whether any part of the cause of action, so far as the present applicant is concerned, had arisen within the territorial jurisdiction of this Bench in the light of the principles decided in the above mentioned cases.

The main grievance of the applicant is that on reinstatement he has been asked to join at a post which is lower in rank to the post to which he had held at the time of compulsory retirement. The order of reinstatement was communicated to the applicant to his Bhubaneswar address vide XI Annexure-XII. True copy of the contents of Annexure-XII is quoted hereunder :

" No.A-40017/1/86-Vig. (vii)
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION AND BROADCASTING.

New Delhi, dated 1st Dec. 1986.

O R D E R

WHEREAS Shri B.C. Mohanty, Administrative Officer, D.F.P. Raipur was prematurely retired from Government Service under clause (J) (i) of rule 56 of the Fundamental Rules vide Ministry of Information and Broadcasting's Order No.A-40017/2/85-Vig. (vi) dated 23.8.1985;

WHEREAS Shri Mohanty submitted a representation dated 20.10.1985 against the aforesaid order of premature retirement ;

NOW, THEREFORE, after considering the aforesaid

Corrected vide
Order No.13 dt.3.8.87

Vice Chairman.

Member (J)

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representation with reference to the relevant records and after taking into consideration all the facts and circumstances of the case, the President has decided that Shri Mohanty should be reinstated in Government service as Accountant, a Group 'C' post in the Directorate of Field Publicity with immediate effect and orders accordingly.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

Sd/-

(I.B. ~~KHAN~~ KARN)

UNDER SECRETARY TO THE GOVT. OF INDIA

TELE: 385016

Corrected vide order No.13
t.3.8.1987.

Amr
Vice Chairman.

Amr 2/8/87.
Member (Judl.)

Shri B.C. Mohanty,
C/o. Qrs. No. IV, R. P. F. -3,
Unit No. 6, Bhubaneswar-751 001
Orissa. "

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On a reading of the contents of Annexure ~~XII~~, one can have no doubt in his mind that a part of the cause of action if not the entire cause of action has arisen within the territorial jurisdiction of this Bench as the reinstatement order absorbing or reinstating the applicant to a Group 'C' post was addressed to the applicant to his Bhubaneswar address and was received by him at Bhubaneswar and the grievance of the applicant is in regard to his reinstatement to a Group 'C' post. Such being the position, we have no doubt in our mind to hold ^{the} the consequences having followed at Bhubaneswar, this Bench has territorial jurisdiction to adjudge the case of the applicant. Hence we find no merit in the contention put forward on behalf of the Respondents that this Bench has no territorial jurisdiction to entertain this case. In view of the above discussions we find that this Bench does not lack in territorial jurisdiction to be exercised in regard to this particular case.

Next, coming to the facts of the case, it was urged on behalf of the applicant that the applicant having been

reinstated into service, he should have been reinstated to the post which he was holding at the time when he was ordered to be prematurely retired. This contention was sought to be repealed by learned ^{Senior Additional} Standing Counsel (Central) placing reliance on Annexure.VII read with Clause (j) of the second proviso to Rule 56 of Fundamental Rules. Second proviso to Clause(j) of Rule 56 runs thus :

" Provided further that a Government servant who is in a Group 'C' post or service in a substantive capacity, but is holding a Group 'A' or Group 'B' post or service in an officiating capacity shall, in case it is decided to retire him from the Group 'A' or Group 'B' post or service in the public interest , be allowed on his request in writing to continue in service in the Group 'C' post or service which he holds in a substantive capacity. "

It was urged by learned ^{Senior Additional} Standing Counsel (Central) that in compliance with the aforesaid rule and accepting the representation of the applicant vide Annexure-VII the authority reinstated the applicant in Group 'C' post and therefore, this application is liable to be dismissed. In his representation dated 21st October, 1985 the applicant submitted before his authorities (Vide Annexure-VII) that since he (applicant) is financially very hard hit and it has been impossible on his part to maintain the family, the authorities may be pleased to reinstate him in a Group 'C' post. Feeling frustrated in his attempt to quash the premature order of retirement the applicant gave ^{an} alternative proposal because it was submitted before us the applicant was moving with begging bowls. In his regular representation against the order of premature retirement

(vide Annexure-VIII) the applicant has specifically stated in view of his submissions made in the said representation,

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Member (J)
21/8/87.

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the case may be reviewed and the applicant be reinstated to a post of Administrative Officer in Group 'B' post. Therefore, we feel that the submissions made vide Annexure-7 was nothing but an alternate proposal finding that his original representation does not yield any fruitful result. That apart, premature retirement is always retirement from service in public interest. If public interest was affected due to continuance of the applicant in service, such public interest would be affected if the applicant is allowed reinstatement to any post or service. No doubt, the rule contemplates that the applicant should be reinstated to a lower post. But such rule appears to be against all canons of justice, equity and good conscience. Once the order of premature retirement is set aside by the competent authority, it is evidently set aside on the ground that public interest has not been affected or would not be affected. Therefore, once the premature retirement is set aside, reinstatement should be to the post which the applicant was holding at the time of premature retirement, otherwise absorption in a post lower than the post which the incumbent was holding would amount to a punishment attracting provisions contained under article 311(2) of the Constitution. This is another barricade for the respondents so far as the Rule quoted above is concerned. Hence, in view of the aforesaid discussion we would hold that the reinstatement of the applicant to a Group C post is illegal. Since the premature order of retirement has been recalled, the applicant should be deemed to have been reinstated to the post of Group B which he was holding at the time when he was prematurely retired, with effect from the date on which he was reinstated to a group C post and the applicant will be entitled

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to all the emoluments to which he is entitled to under the rules in respect of the Group B post less already drawn in Group C post.

5. Thus, this application stands allowed, leaving the parties to bear their own costs.

[Signature]
30.6.87
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

9 agree.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
June 30, 1987/S. Sarangi.

[Signature]
30.6.87
Vice-Chairman