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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION NO. 46 OF 1987

Date of decision .. April 13, 1988.

Abhimanyu Mishra, son of late Bhagaban Mishra,
Ex- Lower Selection Grade Official, P & T. Department,
resident of Balisahi, Town & District- Puri.

... Applicant.

Versus

1. Union of India, represented by the Post Master General, Orissa Circle, Bhubaneswar .
2. Director, Postal Services, Sambalpur Region, Sambalpur, Dist- Sambalpur.
3. Senior Superintendent, Post Offices, Puri Division, Puri.

... Respondents.

M/s P.V.Ramdas & B.K.Panda, Advocates. ... For Applicant.

Mr. A.B.Misra, Sr. Standing Counsel (Central) ... For Respondents.

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).

1. Whether reporters of local papers have been permitted 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 .

JUDGMENT

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K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, punishment awarded to the petitioner vide Annexure-6 compulsorily retiring the petitioner from service is under challenge.

2. Shortly stated, the case of the petitioner is that while he was functioning as Sub- Postmaster in the Police Line Post Office situated within the town of Puri, a quarters had been allotted to the petitioner for his occupation and he occupied the quarters by virtue of the said order. On 11.6.1984 the petitioner was transferred to the Post Office situated in Balisahi within the town of Puri and functioned as the Sub- Postmaster of the said Post Office. The petitioner was noticed to vacate the quarters which had been allotted in his favour while he was functioning as the Sub- Postmaster of the Police Line Post Office and not having done so, a penal rent was assessed on the petitioner and ~~since~~ he still continues to remain in possession of the Government quarters, a disciplinary proceeding was initiated against the petitioner for having misconducted himself and thereby violating Rule 3 (I) (III) of C.C.S. Conduct Rules, 1964. A full fledged inquiry was conducted and the Inquiring Officer found the petitioner to be guilty of the charge and accordingly submitted his findings to the disciplinary authority who in his turn ordered compulsory retirement of the petitioner with effect from March 11, 1986. The appeal preferred by the petitioner did not yield any fruitful result and therefore the petitioner has invoked the *l*en

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jurisdiction of this Bench for interference.

3. In their counter, the Opposite Parties maintained that no illegality has been committed in the matter of inquiry into the alleged mis-conduct of the petitioner and the imposition of penal rent. Principles of natural justice having been observed in its strict term, there has been no prejudice caused to the petitioner and hence the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. P.V.Ramdas, learned counsel for the petitioner and Mr. A.B.Misra, learned Sr. Standing Counsel for the Central Government at some length. Imposition of penal rent was not disputed before us- rather admitted. Mr. P.V.Ramdas relied upon a judgment of the Ahmedabad Bench reported in 1987(1) C.A.T. 567 (Abdulmohit Mustakhkhan vrs. Union of India and others) and this judgment was later relied upon by the same Bench in the case of Nawal Singh vrs. Union of India and others, reported in A.T.R. 1988(1) C.A.T. 264. In both the cases disciplinary proceeding was initiated against the petitioners in those cases for not vacating the quarters in addition to imposition of penal rent. The Hon'ble Judges of the Ahmedabad Bench considering the rules on the subject and also instructions of the Board held as follows :-

* We have given careful consideration to the said instructions. It is nothing more than an advisory opinion rendered by the Railway Board and instructs the authorities to take even punitive action against the Railway staff who are

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occupying the quarters unauthorisedly. The opinion of the Railway Board and the instructions issued by it will not make an act a misconduct which is not so otherwise. On the basis of the study of the relevant rules and the factors involved in the issue, it is held in Abdulmohit Kustakikhan (ATR 1987 (1) CAT 567), that when the Government servant fails to vacate the rent free accommodation, on transfer, he is liable to pay the rent including the penal rent provided under the rules and he will be subject to eviction proceedings under the Government Premises Eviction Act, and hence the disciplinary proceedings are not competent. The issues raised in the instant case are quite identical to the case of Abdulmohit Ahemdohit Mustakikhan wherein, the impugned order of removal from service was passed on the charge of the failure to vacate the quarters. Similar is the situation in the present case. The case of the petitioner is therefore squarely covered by the said case.

Impugned order set aside and the respondents were directed to re-instate the petitioner to his original post and treating him to be in continuous service (emphasis is ours) with a further direction to pay his ~~bill~~ back wages within three months".

Ofcourse, these two decisions were not brought to our notice while we had heard the case forming subject matter of Original Application No. 122 of 1987 decided by us on 16

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March 25, 1988. The petitioner in the said case had also not vacated the quarters allotted to him by the Postal Department and therefore, a disciplinary proceeding had been initiated against him. After hearing counsel for both sides, we were of opinion that in view of the fact that penal rent had already been imposed on him, a departmental proceeding will not be maintainable because not only it will amount to a double jeopardy but question of mis-conduct does not arise. Hence by our judgment dated 25.3.1988 passed in the said case, we had quashed the proceeding which was initiated against the petitioner in the said case. After giving our anxious consideration to the arguments advanced at the Bar in connection with the present case, we find that the present case squarely comes within the view taken by us in Original Application No. 122 of 1987 and also by the Hon'ble Judges of Ahemadabad Bench in both the cases decided by them. We would also respectfully adopt the view taken by the Hon'ble Members of Ahmedabad Bench. Before we arrive at our final conclusion, we would fail in our duty if we do not state that it was submitted by the learned Sr. Standing Counsel that even if there may not be a violation of Rule 3 (I) (III) of C.C.S. Conduct Rules, yet it is a violation of Rule 35 (ii) of the Allocation of Quarter Rules and hence the petitioner is punishable. There appears to be no substance in the argument advanced by the learned Sr. Standing Counsel because ~~exemption of~~ the provisions contained in Rule 35 (ii) ~~shows~~ indicates that it is merely ~~an~~ advisory in nature. Neither it postulates any misconduct nor it postulates any penal action except imposition of penal rent.

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We have already held that once the imposition of penal rent is admitted, the aforesaid action does not come into play. In such circumstances, we find no merit in the aforesaid contention of the learned Sr. Standing Counsel.

Due to the aforesaid reasons, we do hereby quash the order of punishment passed by the competent authority compulsorily retiring the petitioner with immediate effect i.e., with effect from 11.3.1986 (the date of passing of the order under Memo No. ST/RD-14-2/85 dated 11.3.1986) and we would direct that the petitioner should be reinstated forthwith and the petitioner is entitled to all his arrear emoluments including service benefits with effect from 11.3.1986 and the arrears should be paid to the petitioner within three months from the date of receipt of a copy of this judgment.

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

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Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, 9 agree.

Ramnath
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Vice Chairman

Central Administrative Tribunal,
Cuttack Bench.
April 13, 1988/Roy, SPA.