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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.213 of 1988.

Date of decision : November 11,1988.

- 1(a) Jenamani Swain, aged 49 years,
w/o late Sachidananda Swain
- 1(b) Saroj Kumar Patnaik, aged 27 years,
s/o late Sachidananda Swain
- 1(c) Miss. Sephali Patnaik, aged 25 years,
D/o late Sachidananda Swain
- 1(d) Sandhyarani Patnaik, aged 19 years,
D/o late Sachidananda Swain
- 1(e) Manoj Kumar Patnaik, aged 17 years,
s/o late Sachidananda Swain
- 1(f) Sashamitarani Patnaik, aged 13 years,
D/o late Sachidananda Swain
- 1(g) Sabita Patnaik, aged 11 years,
D/o late Sachidananda Swain
- 1(h) Mamata Patnaik, aged 10 years,
D/o late Sachidananda Swain

All are of Nimapara, District- Puri.

... Applicants.

Versus

- 1. Union of India, represented through the
Post Master General, Orissa Circle,
Bhubaneswar.
- 2. Senior Superintendent of Post Offices,
Bhubaneswar Division, Bhubaneswar.
- 3. Estate Officer-cum- Asst. PMG (Investigations),
Bhubaneswar- 751001.

.... Respondents.

For the applicants : M/s.S.S.Mohanty,
R.C.Sahoo,
N.Vaheed,
S.C.Satpathy,
S.L.Patnaik, Advocates.

For the respondents : Mr.Tahali Dalai, Additional Standing
Counsel (Central).

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.

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)

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 that the respondents 1 and 2 may be directed to repost the applicant to his former post i.e. Public Relations Inspector (Postal) at G.P.O., Bhubaneswar and ^{he} directed to desist from eviction of the applicant from his quarters bearing No.4, Unit IV (postal colony), Bhubaneswar and the penal rent already recovered from the applicant may be refunded to him.

2. Shortly stated, the case of the applicant is that while he was working in the Postal Department and was posted at Bhubaneswar, he was transferred to Nimapara as Sub-Post Master. Due to his transfer, the authorities directed the applicant to vacate the quarters - the details of which have been mentioned above. On receipt of such a communication and after the eviction proceeding was initiated against the applicant, this application was filed with the

aforesaid prayer.

3. In their counter, the respondents maintained that in no circumstances the applicant may be retransferred to Bhubaneswar because transfer to Nimapara was on administrative grounds and the question of the applicant's transfer to Bhubaneswar at present does not arise. The applicant having been transferred to Nimapara he is bound to vacate the quarters which was allotted to him. The crux of the stand taken by the respondents is that the case being devoid of merit, is liable to be dismissed.

4. We have heard Mr S.S. Mohanty, learned Counsel for the applicant and Mr.T.Dalai, learned Additional Standing Counsel(Central) at some length. Before we proceed to adjudge the case on merits it is worthwhile to state that after filing of the application the applicant has died and therefore, the legal representatives of the applicant came up with a petition for substitution and it was allowed. An application has been filed by the legal representatives to stay eviction of the family of the deceased employee. This limited prayer was put forth by the legal representatives of the applicant because other reliefs sought by the applicant during his life time could not remain alive to the benefit of the legal representatives. The next prayer of the legal representatives was to quash the order imposing the penal rent. The ^{other} prayers made by the deceased during his life time are deemed to have abated on his death.

5. We have given our anxious consideration to the

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arguments advanced at the Bar on the question of eviction. Mr. Mohanty strongly relied upon the Office memorandum issued by the Government of India in the Ministry of Urban Development (Directorate of Estates) on 21st April, 1986.

It runs thus :

" Subject:- Permissible period of retention of general pool accommodation on retirement, terminal leave/death.

According to the provisions of SR.317-B-11(2), a residence allotted to an officer can be retained on retirement or terminal leave for a period of 2 months and on the death of allottee for a period of 4 months for the bonafide use of the officer or member of his family. The Department of Personnel & Training had suggested that as a measure of good gesture to the retiring Government employees, the permissible period of retention on payment of normal licence fee may be increased from 2 months. The matter has been considered and it has been decided by the Government that the permissible period of retention as per SR.317-B-11(2) may be increased from 2 months to 4 months in the case of retirement of terminal leave, and from 4 months to 6 months in the case of death of the allottee. It has also been decided that in the case of retirement/terminal leave, further retention that can be allowed in special cases on payment of enhanced licence fee as per proviso to SR,317-B-22 may be reduced from a period not exceeding six months to 'not exceeding 4 months'. A copy of the Notification S.O.No.666 dated 10th February, 1986 published in the Gazette of India dated 22nd February, 1986 is sent herewith.

2. Since the notification taken effect from the date of publication in the Gazette of India, permissible period of retention, etc., as indicated above may be given effect to in respect of the above events that may have taken place on or after 22nd February, 1986 and cases where retirement/death has taken place on or before 21st February, 1986 would be governed by the earlier provisions of the Rules. . "

In view of the aforesaid circular we think there is considerable force in the contention of Mr. Mohanty that the family should ~~now~~ be allowed to remain in occupation of the quarters in question for a period of 6 months from the date

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on which the applicant died. Admittedly, the applicant Shri Sachidananda Swain died on 3.9.1988. In view of the fact that the Ministry has raised the period from 4 months to 6 months we would direct that the family members of Sachidananda Swain who are legal representatives and applicants before us should be allowed to retain the occupation of the quarters in question till 28th February, 1989 on payment of usual rent. Since the applicant has already died we feel inclined to take a compassionate view of the matter and we would hereby quash the penal rent already imposed on the applicant and the amount paid on that account by the applicant should be refunded to the legal representatives within three months from the date of receipt of a copy of this judgment.

6. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.



S. Sarangi
11. XI. 88.
.....
Member (Judicial)

B.R. PATEL, VICE-CHAIRMAN

I agree.

B.R. Patel
11.11.88
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack
November 11, 1988/S. Sarangi.