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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No. 2 of 1989.

Date of decision : April 26, 1989.

Jyotshnamayee Buda, aged about 29 years,  
d/o late Braja Bhukan Buda (who died while in  
service as A.P.M. Sundargarh Headquarters  
Post Office on 12.7.88) residing at quarter  
No.C 216 Sector-6, Rourkela-2, Dist-Sundargarh.

... Applicant.

Versus

1. The Union of India, represented by its  
Secretary, Ministry of Communication,  
Dak Bhawan, New Delhi.
2. Postmaster General, Orissa, Bhubaneswar.
3. Director of Postal Services, Sambalpur  
Region, Sambalpur.
4. Senior Superintendent of Post Offices,  
Sundargarh Division, Sundargarh.

... Respondents.

For the applicant ... M/s. S.K. Mohanty,  
S.P. Mohanty, Advocates.

For the respondents ... Mr. A.B. Mishra,  
Senior Standing Counsel (Central)  
Mr. T. Dalai,  
Addl. Standing Counsel (Central)

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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 ? Ad
  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 order passed by the competent authority compulsorily retiring the applicant's father from service vide Annexure-5.

2. Shortly stated, the case of the applicant is that her father was serving as the Assistant Post Master at Rourkela and was allotted with a quarters bearing No. C.216, Sector-6 and after serving some time at Rourkela, the applicant's father, Braja Bhukan Buda was transferred in the same capacity to Sundargarh and though Braja Bhukan carried out the order of transfer and joined at Sundargarh yet he did not vacate the government quarters which was under his occupation. A disciplinary proceeding was initiated against the said Braja Bhukan on the allegation that he lacked in devotion to duty in not having carried out the orders of the competent authority to vacate the quarters. The disciplinary proceeding ended against the applicant and the Director of Postal Services, Sambalpur Region, the disciplinary authority vide his order contained in Annexure-5 compulsorily retired Braja Bhukan Buda and very unfortunately three or four days thereafter Braja Bhukan Buda breathed his last in the hospital. The present applicant has come up with this application praying to quash Annexure-5.

3. In their counter, the respondents maintained that Braja Bhukan Buda having committed gross misconduct, he

was rightly punished by the disciplinary authority for non-vacation of the quarters in question and in no circumstances the order of punishment should be set aside.

4. We have heard from Mr.S.P.Mohanty, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel(Central) at some length. During course of argument Mr.Mohanty relied upon a judgment of the Ahmedabad Bench reported in ATR 1987(1) CAT 567(Abdulmohit Mustakikhan-v-Union of India & others) and contended that non-vacation of Government quarters does not amount to misconduct. Ahmedabad Bench has taken the view that this does not amount to misconduct and the Ahmedabad Bench has relied upon a judgment of the Mysore High Court reported in 1972 SLR 59(B.R.Vengappaya v. State of Mysore & others). We are not only in complete agreement with the views expressed by the Mysore High Court and Ahmedabad Bench but in the past in some cases we have also taken the view that non-vacation of Government quarters would not amount to misconduct and punishable especially because there is provision of law to evict the government servant from the quarters under his occupation under the Public Premises (eviction of unauthorised occupants) Act and also that there is provision in the said Act for imposition of penal rent etc. Such being the position, it is against all canons of justice, equity and fairplay to remove a person from service by compulsory retirement or dismissal etc. We fail to subscribe to the view that this is a fit case in which the applicant's father Braja Bhukan Buda should have been

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compulsorily retired. We therefore, quash Annexure-5 imposing a penalty of compulsory retirement of Braja Bhukan Buda and we direct that he should be deemed to have been in duty and the legal representatives are entitled to all monetary benefits for this period and so also the money due to them viz. <sup>Group Insurance</sup> gratuity etc. All amount due to late Braja Bhukan Buda should be paid to his legal heirs within two months from the date of receipt of a copy of this judgment.

5. It was stated to us by Mr. Mohanty that the departmental authorities should take a compassionate view over the applicant and give her a service because after the death of Braja Bhukan Buda, the family is going with a begging bowl and there is also no other source of income. The mother of the applicant has also expired long before the death of Braja Bhukan Buda. The applicant would file an application before the Postmaster General, Orissa Circle who is requested to take a compassionate view over the applicant and try to give her an appointment according to her educational qualification.

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

*[Signature]*  
26.4.89  
.....  
Member (Judicial)

B.R. D. TEL, VICE-CHAIRMAN,

9 agree

Central Admn. Tribunal,  
Cuttack Bench, Cuttack.  
April 26, 1989/Saranghi.



*[Signature]*  
26.4.89  
.....  
Vice-Chairman