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CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No. 116 of 1990.

Date of decision:- 9th. August, 1991.

Dinabandhu Pradhan ... Applicant.

Versus,

Union of India & Ors. Respondents.

For the Applicant: M/s. S. Kr. Mohanty,
 S. P. Mohanty,
 K. C. Das, Advocates.

For the Respondents: Mr. A. K. Mishra,
 Senior Standing Counsel,
 (Central).

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CORAM:

THE HON'BLE MR. K. P. ACHARYA, VICE-CHAIRMAN.

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1. Whether reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the reporters or not ? /N
3. Whether Their Lordships wish to see the fair copy of the Judgment ?

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J u d g m e n t .

K.P.ACHARYA, VICE-CHAIRMAN.

In this application Under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to be issued to Opp.Party No.4 to stop recovery of penal rent and to pass appropriate orders directing the Opp.Party no.4 to refund the illegal recovery of penal rent so far recovered since 24th.June,1985.

2. Shortly stated, the case of the petitioner is that while he was functioning as Sub-Post Master, Masterpada, he had been transferred to Kantapada Post Office and even after transfer, he did not vacate the Government quarters and therefore vide Annexure-22 dated 27th October, 1984 passed by the Superintendent of Post Offices, Phulbani, Penal rent is being recovered from the Petitioner and therefore this application has been filed with the aforesaid prayer.

3. In their counter, Opp.Parties maintained that imposition of penal rent having been confirmed by Central Administrative Tribunal, Cuttack Bench in its Judgment passed in O.A.122 of 1987 disposed of on March, 25th 1988, the concerned authority is recovering penal rent for unauthorised occupation of a Government quarters by the petitioner and therefore the case being devoid of merit is liable to be dismissed.

4. I have heard Mr.S.P.Mohanty, learned

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counsel for the petitioner and Mr. A.K. Misra, learned Senior Standing Counsel for the Central Government at considerable length. Before I discuss the contentions raised by learned counsel for the petitioner, it will be profitable to state succinctly the previous history of the case. Due to non-vacation of the quarters in question, a proceeding had been drawn against the petitioner and penal rent was also imposed on the petitioner for not ^{having} ~~vacated~~ ^{left} the quarter. The petitioner came up before this Bench with an application Under Section 19 of the Administrative Tribunals Act praying to quash the departmental proceeding and to quash the order of imposing penal rent. This case formed subject matter of O.A. 122 of 1937. Judgment was delivered on 25th March, 1938 and the Division Bench held that there was ample justification on the part of the departmental authorities in imposing penal rent over the petitioner and therefore that part of the order was confirmed by the Division Bench but the Division Bench was of the opinion that since penal rent has been imposed and having been confirmed by the Bench, the proceeding should be quashed and accordingly the case was disposed of.

5. Rightly, Mr. S.P. Mohanty submitted that ^a ~~the~~ single Judge cannot go beyond ^{the} ~~order~~ ^{order} passed by the Division Bench and Judgment passed in O.A. 122/37 cannot be reviewed but Mr. Mohanty

contended that the petitioner is liable to pay penal rent till he has vacated the quarters in question. Mr. Mohanty further submitted that from the averments made in Paragraphs-7 and 8 of the Counter, it is to be found that the petitioner vacated the quarters in question with effect from 1.9.86 and the petitioner was in possession of the quarters till 30.8.86. The averments run, thus:-

" from 1.9.86 Sri Pradhan handed over the quarter portion direct to the house owner Smt. S. Sahu without any intimation and without handing over the same to his successor ".

At Paragraph-8, it is stated as follows:-

* In reply to Sub-Para(d) of Para-4 it is submitted that Sri Pradhan had not vacated the post quarter till 30.8.86".

6. From the averments finding place in the counter as quoted above ^{there} ~~that~~ cannot be any iota of doubt that the petitioner ⁱⁿ was unauthorisedly occupying the quarters in question till 30.8.86. There also cannot be any dispute regarding the fact that Government Officer remaining under unauthorised occupation of a particular Government quarters is liable to pay penal rent for the period of unauthorised occupation by him and not a day beyond that. The unauthorised occupation of the quarters in question by the petitioner being till 30.8.86, penal rent has to be recovered from the petitioner till 30.8.86 and not ^{pen} beyond the said day. Therefore, it is directed

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that penal rent at the rate of 40 percent of the pay of the petitioner be recovered from the petitioner with effect from 3.9.84 till 30.8.86. In case any excess recovery has been made by the Departmental Authority from the pay of the petitioner pertaining to a period beyond 1.9.86 then such amount recovered in excess should be returned to the petitioner within Ninety(90) days from the date of the receipt of a copy of this Judgment.

7. Thus the application is accordingly disposed of leaving the parties to bear their own cost.



[Signature]
9.8.91.
.....
Vice-Chairman.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
Hossain/9.8.91.