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Central Administrative Tribunal,
Cuttack Bench, Cuttack.

Original Application No.205 of 1991

Date of decision: January 18, 1993.

Arta Behera Petitioner

Versus

Union of India and others :Opp. Parties

For the Petitioner ... M/s. S.C.Ghose and S.Ghose,
Advocates.

For the Opp. Parties ... Mr. Aswini Kumar Misra,
Sr.St.Counsel (Central)

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CORAM:

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN
A N D

THE HONOURABLE MR. S.R.ADIGE, MEMBER (ADMINISTRATIVE)

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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. NO.
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,V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order contained in Annexure 3 passed by the Opposite Party No.2 terminating the services of the Petitioner and to direct his reinstatement with full backwages.

2. Shortly stated the case of the petitioner is that the petitioner was functioning as Extra Departmental Branch Post Master, Kudugaon within the Sub Division of Athamallik, in the District of Dhenkanal. While he was serving as such, he suffered seriously from Chollaric diarrhoea accompanied by vomiting for which he approached for grant of leave and he further submitted that he could not give a substitute as no literate person was available in the village in question. Without granting leave to the petitioner, the competent authority terminated the services of the petitioner under rule 6. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the petitioner remained absent from duty unauthorisedly to which great inconvenience was caused to the members of the public in the matter of posting of letters or taking delivery of letters, money orders etc. found The work of the petitioner being unsatisfactory, the competent authority invoking his powers conferred on him under rule 6 terminated the services of the petitioner

which is nothing but legal. Hence it should not be disturbed- rather it should be sustained.

4. We have heard Mr. S.C. Ghosh learned counsel appearing for the petitioner and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (Central). We have no iota of doubt in our mind to hold that the petitioner had avoided to attend duty. From the records we find that a murder case was registered against the father of the petitioner. Though it is stated in the counter that the said murder case was registered against the petitioner himself there is absolutely no evidence support this fact which is stiffly opposed by the learned counsel for the petitioner. We have a grave suspicion that due to registration of a murder case against the father of the petitioner the petitioner might have remained absent. Be that as it may, filing of application by the petitioner for leave on his health ground was also not disputed in their counter by the Opposite Parties. Keeping all this in view, we feel that the punishment imposed on the petitioner has been excessive. The petitioner is not a consistent absentee unauthorisedly. This action should not have been taken against the petitioner abruptly. That apart, before passing an order which may adversely affect a party, for the purpose of compliance of principles of natural justice, the petitioner is entitled to a notice and he is also entitled to submit an explanation as observed by Hon'ble Mr. Justice R.N. Misra (as my Lord Chief Justice then was) in the case

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reported in 1987 (4) SCC 431. Speaking for the court His Lordship observed as follows:

"On the basis of these authorities it must be held that ~~even~~ when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at the hearing or enquiry; (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet".

Keeping all this in view, we do hereby quash Annexure 3 terminating the services of the petitioner and we would direct that a fresh selection may be conducted and cases of all candidates including that of the petitioner be considered and he whoever is found to be suitable order of appointment be issued in his/her favour. The petitioner shall not be entitled to reinstatement or back wages. Further we would make it clear that the remarks passed by the concerned authority contained in Annexure 3 that the work of the petitioner was unsatisfactory or the fact that the petitioner had not given any substitute during his leave period shall not be counted against the petitioner while considering his suitability. Bereft of all this the case of the petitioner be considered along with others.

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

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MEMBER (ADMINISTRATIVE)

by as
18.1.93
VICE CHAIRMAN

Central Admn. Tribunal,
Cuttack Bench/K. Mohanty/18.1.1993.